

United States
Circuit Court of Appeals
For the Ninth Circuit.

ALASKA PACIFIC FISHERIES, a Corporation, Its Officers,
Agents, Employees, and All Persons Acting by, Through or
Under It or in Privity With It,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Alaska, Division No. 1.

Filed

SEP 23 1916

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

263—K. A.

No. 1468—A.

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through, or Under It or in
Privity with It,

Defendant and Appellant.

Names and Addresses of Attorneys of Record.

HELLENTHAL & HELLENTHAL, Juneau,
Alaska,

C. H. HANFORD, 355 Colman Bldg., Seattle,
Washington,

Counsel for Appellant.

JAMES A. SMISER, U. S. Attorney, Juneau,
Alaska,

JOHN W. PRESTON, United States Attorney,
San Francisco, California,

M. A. THOMAS, Assistant U. S. Attorney, San
Francisco, California,

Counsel for Appellee.

*In the District Court for the District of Alaska,
Division Number One, at Ketchikan.*

263—K. A.

No. 1468—A.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through, or Under It or in
Privity with It,

Defendants.

Complaint.

Comes now the United States of America, and brings this Bill of Complaint against the Alaska Pacific Fisheries, a corporation, its officers, agents, employees, and all persons acting by, through or under it or in privity with it, and complaining against the said defendants alleges:

I.

That the plaintiff, by virtue of its sovereignty, is the owner and seized in fee of the body of land known as Annette Island, situated in the Alexander Archipelago, in Southeastern Alaska, on the north side of Dixon's entrance, all situate within the First Division of the District of Alaska and within the jurisdiction of this court, and of the waters adjacent thereto.

II.

That prior to March 3, 1891, said island was occupied by an association of Indians known as the Matlakatlans or Metlakatlan Indians, and on said date the President approved an Act of the Congress of the United States, setting aside and apart as a reservation for the use of said Indians and such other Alaska natives as might join them said Annette Island and the islands adjacent thereto, which said Act is an Act entitled "An Act to repeal timber culture laws, and for other purposes," approved March 3, 1891, and Section 15 thereof provides as follows:

"Sec. 15. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago, in South-eastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakatla Indians, and those people known as Metlakatlans who recently emigrated [1*] from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior."

III.

That by virtue of said Act of Congress, the said Annette Islands and the whole thereof, the uplands together with the shore lands, became and at all times

*Page-number appearing at foot of page of original certified Record.

since the date of said Act have been and now are reserved to the exclusive use and benefit and occupancy of the Indians mentioned in said act, with the exclusive right to the use of the shore or tide-lands at all places on said islands to deep water free from obstructions or structures erected or maintained by others, and to the right of fishery in the waters surrounding said islands exclusively.

IV.

That ever since the passage of said Act of Congress, the Indians mentioned in said Act have been in the sole, exclusive, quiet and peaceable possession of said islands and the waters surrounding the same and adjacent thereto; that they have improved said lands, built a town thereon known as the village of Metlakatla, built and maintained a school, built and maintained a water system, built and maintained a fish cannery, sawmill, have governed themselves and by ordinances provided for fire protection and health protection, and have been in exclusive possession of the fisheries in the waters surrounding said islands; and in addition thereto have erected and maintained one of the largest churches in the Territory of Alaska.

V.

That in the year 1914, by ordinance of the Council of said Annette Islands, existing under the regulations of the Secretary of the Interior as provided by said Act of Congress, and with the approval of said Secretary, permits were granted to natives among the class mentioned in said Act of Congress to drive

and maintain fishing-traps in the waters surrounding said Island, and like permits were granted to such natives in the year 1915, and at no time since the passage and [2] approval of said Act of Congress has there been any interference by any person not mentioned in said Act of Congress with the possession and rights as aforesaid of the persons mentioned in said act until as herein alleged.

VI.

That in the year 1916, and prior to the commencement of this action, and, to wit, on April 28th, 1916, the President of the United States issued his proclamation defining the water boundaries of said reservation, and further reserving the fisheries thereof, and warning all unauthorized persons not to fish in or use any of the waters described therein; that the waters mentioned in said proclamation belong to the United States, and are within the jurisdiction of this court, and are part of the reservation by said proclamation and theretofore by said Act of Congress made for the use of the persons mentioned in said Act of Congress. A copy of said proclamation is hereto attached and made a part hereof and is marked Exhibit "A."

VII.

That all of the waters mentioned herein are navigable waters of the United States, and under the provisions of the Act of Congress of March 3, 1899 (approved on March 3, 1899), entitled "An Act making appropriations for the construction, repair and preservation of certain public works on rivers and

harbors and for other purposes," it was made unlawful for any person to create any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States, or to build or commence to build any structure in any waters of the United States except within established harbor lines, unless authorized by the Secretary of War prior to the beginning of the same, and upon plans submitted to and approved by the Chief of Engineers and the said Secretary, and that no harbor lines have ever been established in any of the waters of, surrounding or adjacent to said Annette Islands.

VIII.

That in the year 1916, prior to the commencement of this action the defendant Alaska Pacific Fisheries, a corporation, without right or title or color of same, and unlawfully, and with full knowledge [3] of all and singular the matters and things hereinbefore set out, and with knowledge of the intention of the President of the United States to issue the proclamation set forth herein, trespassed and entered upon the lands herein described, to wit, on the westerly shore and shore-land of said Annette Island, and drove a fish-trap from the shore of said island over the tide-lands and out into the deeper waters adjacent to said island and within the three thousand feet reserved in said proclamation, and in defiance of the law as herein set forth, and of said proclamation, and of notice personally served upon it and posted upon said premises, have maintained and are

maintaining and fishing said trap upon said shore-lands and the said reserved adjacent waters, and threaten to continue the same unlawfully and defiantly as aforesaid.

IX.

That on, to wit, May 2, 1916, notice was duly served by posting and personal delivery to said defendant of said reservations and said defendant was notified to cease driving or attempting to drive traps in said reserved lands and waters and to cease fishing therein.

X.

That other corporations, companies and persons have threatened to commit like trespasses upon said reservation, encouraged thereto by the action of the defendant herein, and threaten that they will commence the constructions of similar structures and commit other and further trespasses upon said property.

XI.

That the plaintiff has been for over a quarter of a century engaged by the means herein set forth and otherwise in caring for, educating and civilizing the Indians mentioned in said Act of Congress, and said Indians are now in the main educated and have adopted the habits and customs of civilized peoples, and the effect of the encroachments set forth herein upon the said reservation is greatly demoralizing and tends to destroy the effect of the plaintiffs [4] twenty-five years' endeavor for the uplift and civilization of said Indians and its efforts to make them

self-supporting and self-governing, and will thereby cause the plaintiff and said Indians irreparable injury, and there is no plain, sufficient, speedy or adequate remedy at law in the premises; that under the provisions of said Act of March 3, 1899, plaintiff is entitled to a mandatory injunction commanding said defendants to remove said structure from said water, and plaintiff is also entitled to an injunctional order from this Court requiring said defendants to desist from further construction, operation or maintenance of said structures *pendente lite*.

XII.

That the persons mentioned in said Act of Congress, to wit, said Indians, have at all times since the approval of said Act fished in the waters described in said proclamation, and that during a season lasting about three months and commencing about the middle of the month of May each year large quantities of salmon and other fish travel in the waters aforesaid; that the defendant's said fishing-trap is the most perfect fishing device in class known and catches immense quantities of fish daily during the said fishing season, and each day's operation thereof causes irreparable injury to plaintiff and said Indians, for the reasons herein set forth, and encourages other persons, firms, companies and corporations to commit similar trespasses.

XIII.

That there are ample fishing grounds, and sites and locations for traps in Southeastern Alaska, other than the limited area reserved for the purposes mentioned herein, and defendant has heretofore made

use of them and plaintiff is informed and believes is still so doing; and to permit defendant or others in like situation to maintain or operate traps in the said reserve will tend to destroy the confidence of said natives in the Government of the United States and its promises and endeavors in their behalf, and will result in irreparable injury to them and to plaintiff.

[5]

WHEREFORE, plaintiff prays the Court in the premises,—

For an injunction *pendente lite* directed to said defendants and those acting with, for or under them or in privity with them, at once enjoining and restraining them from continuing the construction of the trap mentioned in this complaint, or from fishing the same, or interfering in any way whatsoever with the free and uninterrupted passage of fish in and through the waters described in said proclamation, or from in any way trespassing upon the lands described in said Act of Congress or the waters adjacent thereto or upon the littoral rights of the said natives.

For a mandatory injunctional order compelling said defendants to vacate said lands and waters and to remove therefrom, and to remove said structures therefrom, and for an order to show cause why said last-mentioned order should not issue, if any they can, returnable at such time as the Court may fix.

That unless within five days from the entry of the order of this Court requiring said defendants to remove said structures and obstructions and vacate said premises, the defendants remove said structures and

obstructions in and upon the lands and waters of the United States, the same may be removed by the order of this Court directed to the marshal of this division, and the necessary costs and expenses of such removal be recovered against the said defendants and judgment therefor be awarded this plaintiff in the final decree of the Court herein.

For costs hereof and for such other and further and additional relief as the needs of the case may demand.

JNO. J. REAGAN,
Asst. U. S. Atty.,
Atty. for Pltff. [6]

United States of America,
District of Alaska, Ketchikan,—ss.

Jno. J. Reagan, being duly sworn, deposes and says: That he is Assistant United States Attorney for the First Division of the District of Alaska, and appears in this action by direction and authority of the Attorney General of the United States; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

JNO. J. REAGAN.

Subscribed and sworn to before me this 31st day of May, 1916.

[Court Seal] C. Z. DENNY,
Deputy Clerk of District Court, District of Alaska,
Division No. 1. [7]

**Exhibit "A" to Complaint—Proclamation by
President of United States of America.**

By the President of the United States of America.

A PROCLAMATION.

Whereas it is provided by section fifteen, of the act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An Act to Repeal Timber-Culture Laws, and For Other Purposes," that "Until otherwise provided by law, the body of lands known as Annette Islands, situated in the Alexander Archipelago in Southeastern Alaska, on the north side of Dixon's Entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtlan Indians, and those people known as the Metlakahtlans, who have recently emigrated from British Columbia, and such other Alaskan natives as may join them, to be held and used by them in common under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior," and

Whereas the Secretary of the Interior, with a view to assisting the Metlakahtlans to self-support, has decided to place in operation a cannery on Annette Island; and

Whereas it is therefore necessary that the fishery in the waters contiguous to the hereinafter described group comprising the Annette Islands be reserved for the purpose of supplying fish and other aquatic products for said cannery;

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the power

in me vested by the laws of the United States of America, do hereby make known and proclaim that the waters within three thousand feet from the shore at mean low tide of Annette Island, Ham Island, Lowis Island, Spire Island, Homlock Island, and the adjacent rocks and islets, located within the area segregated by the broken line upon the diagram hereto attached and made a part of this proclamation, also the bays of the said islands, rocks and islets are hereby reserved for the benefit of the Metlakahtlans and such other Alaskan natives as have joined them or may join them [8] in residence on these islands to be used by them under the fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

Warning is hereby expressly given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 28 day of April in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States the one hundred and fortieth.

Filed in the District Court, District of Alaska, First Division. Jun. 1, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy.

[Endorsed]: In the District Court of the United States for the 1st Div. of Alaska. United States of America vs. Alaska Pacific Fisheries, etc., et al. Complaint. [9]

15°20'

Gravina I.

Revillagigedo I.

Spire I.

Bold I.

Lewis I.

Walker I.

Ham I.

Hemlock I.

ANNETTE
ISLAND

Mary I.

Cat I.

Hotspur I.

Dog I.

Duke I.

Percy I.

131°40'

131°20'

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[Enclosed]

States for the 1st Div. of Alaska. United States of
 America vs. Alaska Pacific Fisheries, etc., et al.
 Complaint. [9]

*In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan.*

No. 1468—A.

No. 263—K. A.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES,

Defendant.

Answer.

Comes now the defendants and for Answer to the Complaint of the plaintiff herein admit, deny and allege as follows:

I.

Referring to the allegations contained in paragraph I of the Complaint, the defendants admit the same.

II.

Referring to the allegations contained in paragraph II of the Complaint, the defendants admit the same, only in so far as the same relates to the single island named, Annette Island, denying that any other islands are included in said proclamation.

III.

Referring to the allegations of paragraph III, the defendants admit that subsequent to the passage of the Act of Congress referred to in paragraph II in the Complaint, Annette Island has been occupied by the Metlakatla Indians or Metlakatlans

referred to in the Act; but the defendants deny that the shore-lands or any part of said shore-lands, that is to say, the tide-lands lying between low water and the ordinary line of high tide, have been reserved by virtue of said Act of Congress or have been occupied by said Indians either in whole or in part, [11] and the defendants deny that the right of fishing in the waters surrounding said Island was by virtue of said Act of Congress or otherwise reserved to the use of the said Metlakatlangs or others referred to in said Act or at all.

The defendants deny that the said Indians, Metlakatlangs or others referred to in said Act or any other person or persons whatsoever have had by reason of said Act or otherwise the exclusive right to use, occupy or control the tide-lands lying between low-water mark and the line of ordinary high tide along the shore of Annette Island or any part of said tide-lands.

IV.

Referring to the allegations of paragraph IV of the Complaint, the defendants deny that ever since the passage of the Act of Congress therein referred to or at all, or at any time whatsoever, the Indians mentioned in said Act or any other person or persons whatsoever have been in the sole or exclusive or quiet or peaceable possession, or have been in any wise possessed of the waters surrounding said Island and adjacent thereto or any part or portion of said waters whatsoever.

The defendants admit that the Indians referred to in said Act have occupied Annette Island and

they have built thereon a village known as Metlakatla containing a school, water system, fish cannery, sawmill, and the defendants further admit that in a limited sense said Indians have governed themselves. This admission, however, is made subject to the following qualification: That while the fish cannery and other improvements mentioned were built by the Indians referred to, all such work of construction was done under the personal supervision of one Father Duncan, a white man, and the operation of [12] the cannery and sawmill mentioned was at all times under the personal supervision of the said Father Duncan, who, as herein elsewhere stated, was at all times at the head of said Indian colony until deposed by the plaintiff, and in this connection it is further averred that neither said cannery nor sawmill have been operated since the time that said Father Duncan was so deposed.

V.

Referring to the allegations of paragraph V of the Complaint, the defendants aver that they have not knowledge or information in relation to the matters and things therein set forth sufficient to enable them to form a belief and they therefore deny the same.

VI.

Referring to paragraph *six* VI of the Complaint, the defendants admit that on the 28th day of April, 1916, the President of the United States issued a proclamation as in said paragraph referred to, but in this connection aver that said proclamation so issued was issued without authority of law and is void

and of no effect. In this connection defendants aver that said proclamation of the President was made without authority and in violation of the provisions of the Constitution of the United States, the matters referred to and sought to be affected by said proclamation being entirely within the jurisdiction of Congress, under the provisions of the Constitution.

VII.

Referring to the allegations of paragraph VII of the Complaint, the defendants deny each and every allegation in said paragraph contained, except that the waters therein referred to are navigable waters of the United States, and that no harbor lines have ever been established in any of the waters surrounding or adjacent to Annette Island. [13]

VIII.

Referring to paragraph VIII of the plaintiff's complaint, the defendants aver that the Alaska Pacific Fisheries constructed a fish-trap in the navigable waters on the westerly side of Annette Island, but deny the said fish-trap was constructed without right or without title or color of title, or that the same was constructed unlawfully, and further deny that said fish-trap was constructed with full knowledge or with any knowledge whatsoever of the fact that the President of the United States intended to issue the proclamation referred to in the complaint and hereinbefore referred to, or with any knowledge of any of the matters or things referred to as set out in the complaint, except such

matters and things as have been hereinbefore expressly admitted.

And the defendants further deny that they trespassed upon the westerly shore or any part of Annette Island or committed any act of trespass whatsoever, and deny that they entered upon the shore-land of said Island or upon said Island at all either for the purpose of driving a fish-trap or otherwise; deny that they entered upon the tidelands lying in front of said Island in this connection or at all, but admit that the fish-trap constructed by them is situate within three thousand feet from the shore of said Island, denying, however, that the same is within any reserve created or existing, admitting that the same is within the area sought to be reserved by the proclamation of the President hereinbefore and in the Complaint referred to, averring that said proclamation was issued without authority of law and is void and of no effect.

Defendants further deny that said fish-trap was constructed in defiance of law or in defiance of said proclamation [14] made by the President, and aver in this connection that the construction of said fish-trap commenced on the 7th day of April, 1916, and was completed on the 18th day of April, 1916; that no knowledge, notice or information ever reached the said Alaska Pacific Fisheries, or any of these defendants, that the President of the United States intended to issue any such proclamation as is herein referred to and as is referred to in the Complaint until after said fish-trap was fully completed, and that the notice served as referred to in

paragraph VIII was served upon the defendants and the said Alaska Pacific Fisheries after the completion of said fish-trap.

The defendants in this connection further aver that while it is their intention to operate said fish-trap for the purpose of catching fish to supply their canneries as hereinafter more specifically set forth, said acts of said defendants in so operating the same are neither unlawful nor defiant, but are within the rights of said defendants and the said Alaska Pacific Fisheries as citizens of the United States as hereinafter more expressly referred to.

IX.

Referring to the allegations of paragraph IX, the defendants admit that they were on the 4th day of May, 1916, served with a notice as in said paragraph set forth.

X.

Referring to the allegations of paragraph X of the Complaint, the defendants aver that they have not knowledge or information concerning the matters and things therein set forth [15] or any of them sufficient to form a belief, and therefore the defendants deny each and every allegation contained in said paragraph X and the whole thereof.

XI.

Referring to the allegations in paragraph XI of the Complaint, the defendants deny that the plaintiff has been for a period of a quarter of a century, or at all, engaged by the means set forth in the complaint or otherwise or at all in caring for, educating or civilizing the Indians mentioned in the Act of

Congress, or that the plaintiff has in any wise assisted said Indians or rendered them any service whatsoever, except that Annette Island was by Act of Congress reserved for their use as hereinbefore set forth.

The defendants admit that the Indians have been to some extent during the past twenty-five years educated, and they have to some extent adopted the habits and customs of civilized people, but deny that this is due either in whole or in part to any efforts on the part of the plaintiff.

The defendants deny that the Indians mentioned have been injuriously affected by any of the matters and things referred to in the Complaint or that any encroachments upon their rights on the part of the Alaska Pacific Fisheries or any of the defendants herein has been demoralizing or has tended to destroy the effect of the plaintiff's endeavors during twenty-five years or at all for the uplifting and civilization of said Indians, or the endeavors of anyone else other than the plaintiff in behalf of these matters either in the way of making said Indians self-supporting, self-governing or otherwise, or that any of the matters or things referred to in the Complaint will cause the plaintiff or said Indians irreparable injury or any injury whatsoever, and defendants further deny that there is no plain, speedy remedy at law, and denying that the plaintiff is entitled under the provisions of the Act of March 3, 1899, or under the provisions of any other act [16] or law whatsoever to a mandatory in-

junction commanding the defendants to remove structures from the waters referred to or to any other relief whatsoever, or that the plaintiff is entitled to an injunction to be issued out of this court requiring the defendants to desist from further constructing, operating or maintaining the structures referred to during the pendency of this action or to any other relief in this connection whatsoever. And in connection with the matters and things referred to in said paragraph XI, the defendants aver:

That prior to the time the Act of Congress referred to in the Complaint and hereinbefore referred to, setting aside Annette Island as a reservation was passed, one Father Duncan, a man of benevolent and altruistic tendencies, had proceeded to British Columbia with a view of civilizing and uplifting the native tribes resident in that locality; that he, at the head of a colony, migrated from said British Columbia to Annette Island, taking with him from said British Columbia the Metlakatla Indians or Metlakatlans referred to in the Act of Congress creating said reservation; that all of the Indians so migrated from British Columbia to Annette Island were citizens, residents and inhabitants of British Columbia prior to the said migration and came to Annette Island as members of a colony headed by the said Father Duncan.

That prior to the passage of the act creating the [17] reservation referred to, a party composed of United States Senators and other influential men visited said colony and at the request of said Father Duncan introduced in Congress the measure creat-

ing the Annette Island Reservation for the use and benefit of said colony of Indians; that said Father Duncan, without any assistance from the plaintiff whatsoever, established a church, a school, a cannery, a sawmill and the other improvements referred to in the Complaint on said reservation, employing in that connection the Indians residing upon the reservation; that through the efforts of said Father Duncan and through his efforts alone said Indians were educated and civilized and taught the habits, trades and customs of civilized people.

That while the said Father Duncan was so active in the uplifting and civilization of said Indians, the plaintiff, acting through one of its bureaus, deposed said Father Duncan as leader of said colony and placed the same, together with all the structures and improvements placed thereon at the direction of Father Duncan, under the control of the Bureau of Education; that said action of the Bureau of Education was resisted by said Father Duncan, but notwithstanding such resistance, said Bureau of Education assumed control of all the property situate on Annette Island and deposed said Father Duncan from the leadership of said colony, which action on the part of the Bureau of Education resulted in the demoralization of the colony and the undoing of much of the benevolent work theretofore performed by the said Father Duncan.

That the said Father Duncan was so deposed and the [18] property referred to was so seized by the said Department of Education in the year —, and that since said last-mentioned date the cannery

and sawmill situate on said Island, which had been theretofore profitably operated by said Father Duncan have remained idle, and the good work, both in connection with the civilization of the Indian tribes and in the attempt to make such tribe self-supporting, was by said indiscreet action of the Bureau of Education largely undone.

XII.

The defendants admit that the Indians mentioned in the Act of Congress have since the approval of said Act to some extent fished in the waters described in the proclamation of the President hereinbefore referred to, and the defendants admit that during each fishing season large quantities of salmon and other fish travel in said waters.

The defendants further admit that the defendants' fishing-trap constructed as hereinafter more specifically set forth is the most perfect fishing device known, and is such as to catch large quantities of fish daily during the fishing season, but denies that each day's operation thereof, or the operation thereof for any period of time whatsoever, will cause irreparable injury or any injury whatsoever to the plaintiff or to the said Indians or to anyone else, and deny that any of the matters and things set forth in the Complaint will encourage any person, persons, corporations, companies or firms or anyone whatsoever to commit any kind of trespass.

XIII.

Referring to the allegations of paragraph XIII, the [19] defendants deny that there are ample

fishing grounds or sites or locations for traps in Southeastern Alaska outside of the area embraced within the reserve of the President herein and in the Complaint referred to.

The defendants admit that they have heretofore caught fish in other localities and that they are still catching fish in other localities as hereinafter more specifically narrated, but deny that they are able to catch a sufficient supply of fish in localities other than the waters embraced within said so-called reserve of the President to supply their now existing canneries with fish for canning purposes.

The defendants deny that to permit the defendants or others in like situations to maintain or operate traps in the waters contained within said so-called reserve would tend to destroy the confidence of the natives in the government of the United States or to destroy the confidence of such natives in the promises and endeavors of such Government in their behalf, or that to do so would result in irreparable injury or any injury whatsoever to them or to the plaintiff.

And the defendants further answering aver:

I.

That the Alaska Pacific Fisheries is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, duly authorized to do business in the Territory of Alaska, under and by virtue of the laws thereof, having complied with all the requirements of the laws of said Territory relating to corporations, and that it is authorized [20] to engage in the business of fishing and can-

ning fish and to carry on and conduct other similar pursuits.

II.

That each and all of the stockholders of said Alaska Pacific Fisheries are citizens of the United States of America and that there have been no alien stockholders in said corporation at any time since its organization.

III.

That said corporation is the owner of three salmon canneries situate in Southeastern Alaska, one of these is situate at Chilkoot Inlet, many miles to the north of Annette Island, and this cannery is not dependent for its fish supply upon fish caught in any of the waters or localities hereinbefore referred to, the other two canneries are situate, one at Yes Bay and one at Chomly. The first named cannery of these last-mentioned canneries, that is to say, the cannery situate at Yes Bay is dependent to a considerable extent upon fish caught within the navigable waters of the United States situate within the area covered by the President's proclamation aforesaid, and the last mentioned, that is to say, the cannery situate at Chomly is dependent from $\frac{1}{2}$ to $\frac{1}{3}$ for its fish supply upon fish caught within the navigable waters of the United States embraced within said proclamation of the President.

IV.

That in the construction of said canneries the said Alaska Pacific Fisheries Company has expended many thousands of dollars, said canneries being in all respects modern and well equipped canneries;

the cannery at Yes Bay having a capacity of 100,000 cases and that at Chomly having a capacity of 110,000 cases; that in the winter and spring of [21] 1915 and 1916 the said Alaska Pacific Fisheries bought its supplies for and equipped its said canneries so that the same could be fully operated during the year 1916, and expended in that behalf a sum aggregating \$500,000.

That for many years last past the said Alaska Pacific Fisheries has caught and purchased fish caught in the navigable waters of the United States so enclosed within the proclamation of the President for use in its said canneries, and relying upon its right to catch and take from such navigable waters the fish found therein has expended the sums afore-said in the construction and equipment of its said canneries.

That in the spring of 1916, with a view of supplying its said canneries, more especially its said Chomly cannery, the capacity of which had been increased during the winter of 1915 and 1916, constructed a fish-trap in the navigable waters of the United States off the west shore of Annette Island, which said fish-trap was so constructed that the portion thereof nearest the shore was and is more than 600 feet distant from Annette Island, and a considerable distance below and to the seaward of low-water mark, and its seaward portion is distant approximately 2000 feet from the shore of said Annette Island; that said fish-trap so constructed is a well-known ordinary and usual device employed in

catching salmon in the navigable waters of the United States, and is so constructed that it does not interfere with navigation or in any wise obstructs the navigable channels or waters of the United States or prevents the free use thereof, but that to the contrary said trap so constructed and maintained is an actual aid to navigation and serves to take the place of aids to navigation which should be maintained by the plaintiff. [22]

V.

That said fish-trap was fully completed before any proclamation was issued by the President as stated in the Complaint or at all, and was built and completed without any knowledge of any intention on the part of the President to issue such proclamation, and that in its construction and maintenance said Alaska Pacific Fisheries acted lawfully and in the exercise of its right to catch food fish in the public fisheries, and further that said trap was constructed in full compliance with the laws of the United States and the Act of Congress relating to the construction and maintenance of fish-traps, is not situate across or above the tide-waters of any creeks, stream, river, estuary, or lagoon, or within one hundred yards outside of the mouth of any red salmon stream or within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fish appliance.

And in this connection the defendants further aver that if the Alaska Pacific Fisheries is deprived of the use of said trap, it will be unable to supply its said canneries, more especially its said Chomly

Cannery, with sufficient fish to operate the same except to a very limited extent during the year 1916; that if so deprived to operate its said cannery to its full extent at Chomly a large extent of the moneys so expended in outfitting the cannery for the season's work of 1916 will be lost; that the loss in that behalf to the Alaska Pacific Fisheries if not allowed to operate said fish-trap during the year 1916 will aggregate at least fifty thousand (\$50,000.00) dollars, all of which will be a total loss to the said Alaska Pacific Fisheries.

In this connection the defendants further aver that [23] the salmon cannery formerly constructed on Annette Island as hereinbefore set forth was destroyed by fire, and that there is not now any cannery on Annette Island in which salmon can be canned, and that because of the lateness of the season it is impossible to construct a cannery on said Island in time to can fish caught during the season of 1916.

That the Indians residing on Annette Island have always been employed by the said Alaska Pacific Fisheries in connection with its operations to the extent that all of such Indians seeking such employ have at all times been given employment; and that the said Alaska Pacific Fisheries have already during this season and still intend to employ such Indians in that connection.

That the issuance of an injunction *pendente lite* would not only work irreparable injury to the defendant, the Alaska Pacific Fisheries, in that it would cause a loss to it during the season of 1916 of

not less than fifty thousand (\$50,000) dollars because of its failure to put up its salmon pack during that season if prevented from so supplying its cannery with fish, to say nothing of the loss to the plant and the original investment therein if such plant is deprived of its fish supply by the threatened action of the plaintiff, but, on the other hand, the Metlakatls and Metkatla Indians will, if this injunction be issued, be deprived of employment because of their inability to catch fish in said trap and assist in the canning of the same, and suffer great injury in that behalf in view of the fact that no cannery exists on Annette Island in which such Indians can be employed or in connection with which such employment [24] can be obtained.

That in making the investments above referred to and making the expenditures of money herein related, the Alaska Pacific Fisheries relied not only upon its right to catch fish in the waters of the United States, but also upon the Acts of Congress regulating the fisheries and enacted in relation to such fisheries, and upon the good faith of the Government of the United States in the preservation and protection of its said rights.

WHEREFORE the defendants pray that the plaintiff's bill be dismissed and that the application for an injunction *pendente lite* be denied, and that the restraining order heretofore issued be dissolved.

JAMES A. SHOUP,

C. H. HANFORD,

HELLENTHAL & HELLENTHAL,

Attorneys for the Defendants.

United States of America,
Territory of Alaska,—ss.

Charles A. Burckhardt, being first duly sworn, on oath deposes and says: That he is the president of the Alaska Pacific Fisheries, defendant herein; that he has read the foregoing Answer, knows the contents thereof, and believes the same to be true, and affiant makes this affidavit on behalf of the Alaska Pacific Fisheries.

CHARLES A. BURCKHARDT.

Subscribed and sworn to before me this 15th day of June, 1916.

[Seal]

SIMON HELLENTHAL,
Notary Public for Alaska.

My commission expires Nov. 30, 1917.

Due service by copy admitted this 15th day of June, 1916.

JNO. J. REAGAN.

Filed in the District Court, District of Alaska,
First Division. June 15, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [25]

*In the District Court for the District of Alaska,
Division No. One, at Ketchikan.*

No. 1468-A.

No. 263-K. A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Reply.

The plaintiff, referring to the 8th paragraph of defendant's answer, denies that said trap was completed on the 18th day of April, 1916, and alleges that said trap was not completed until the latter end of May or the first of June, 1916; and denies all the affirmative matters set forth in paragraph 11 of said answer, excepting as follows: That said Indians migrated from British Columbia to Annette Islands and the plaintiff set aside said Islands as a reserve for said Metlakahtlans and permitted the said William Duncan, described in said answer as Father Duncan, to remain with them and aid in their education and training; and alleges that the plaintiff appropriated large sums of money, to wit over \$15,000, to assist in the education and training, industrially and otherwise, of said Indians, and that said Duncan was entrusted with other sums of money by other persons for the same purpose and in

trust for the use of said Indians; and denies that any action of the plaintiff or any of its departments is responsible for the condition of affairs which plaintiff is struggling to overcome. As to defendant's further answer, plaintiff has no knowledge or information as to allegations thereof and therefore denies the same.

As to the allegations of 4th paragraph thereof, plaintiff has no knowledge or information, and therefore denies the same, except that it admits that defendant purchased fish from the natives caught within the reserve in this action set forth.

As to the allegation of the 5th paragraph thereof, plaintiff [26] denies said trap was fully completed before any proclamation was issued by the President as in this action stated, and denies that same was built and completed without any knowledge of the intention on the part of the President of the United States to issue such proclamation, and denies that it acted lawfully in the construction of said trap, and denies that said defendant will be unable to supply its canneries or any of them with sufficient fish to operate the same if prevented from fishing in the waters reserved by the said proclamation; and alleges that it can supply itself with fish as it has done heretofore by purchasing the same, so far as they are derived from the waters described herein, from the natives inhabiting said reserve; and denies that said defendant will be damaged in the sum of \$50,000 or in any sum at all if prevented from fishing within said reserve; and further denies that

it is impossible to construct a cannery on said reserve in time to can fish during the season of 1916; and denies that that is a material fact in this suit; and denies that the issuance of an injunction will work an irreparable or any injury to the defendant or will cause it a loss of \$50,000 or any sum whatever; and alleges that if there is any loss to the defendant for the driving and maintenance of said trap, it is due to the illegal act of the defendant itself and to no other cause; and denies the right of the defendant to allege any loss to the said Metlakhtlans; and alleges that said allegation is immaterial to any issue in this suit; and alleges that the same is not true. And further, plaintiff denies that said defendant relied upon any pretended right to catch fish in said reserve; and denies that said defendant acted in good faith in the driving and maintenance of said trap and its attempt to operate the same, and alleges that it has been the practice under the regulations of the Interior Department of the United States well known to the defendant to obtain permits from the Interior Department or the Annette Council acting under authority of said Interior Department for the construction of traps in the waters aforesaid, and that these traps are permitted and have been so permitted to be constructed only by inhabitants of [27] said reserve and under financial arrangement well known to the defendant, and the catch of said traps and of all fishing in said waters have been purchased by the defendant and others for the supply of their canneries, and the con-

struction of the trap mentioned herein is a detriment because of preventing the work of the natives in the fishing industry rather than a help to them.

WHEREFORE plaintiff prays as in said complaint it has heretofore prayed.

JNO. J. REAGAN,

Asst. U. S. Atty.

United States of America,

District of Alaska,

At Juneau,—ss.

Jno. J. Reagan, being duly sworn, deposes and says: That he is Assistant United States Attorney for the First Division of the District of Alaska, and appears in this action by the direction and authority of the Attorney General of the United States; that he has read the foregoing reply, knows the contents thereof and believes the same to be true.

JNO. J. REAGAN,

Subscribed and sworn to before me this 15th day of June, 1916.

[Notarial Seal]

INA S. LIEBHARDT,

Notary Public.

My commission expires September 29, 1919.

Received a copy of above June 15, 1916.

HELLENTHAL & HELLENTHAL,

Filed in the District Court, District of Alaska,
First Division. Jun. 15, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [28]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1468-A.

No. 263-K, A.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
its Officers, Agents, Employees, and all Per-
sons Acting by, Through or Under It or in
Privity with It,

Defendants.

Memorandum Opinion.

PRESIDENT'S PROCLAMATION.

Reserving Annette Island for Metlakahtla Indians,
etc. [29]

On March 3, 1891, Congress passed an Act entitled "An Act to Repeal the Timber Culture Laws," the 15th Section of which Act reserves "that body of lands known as Annette Islands" for the use of Metlakahtla Indians and others therein named.

In April of 1916 the defendants, without permission of any kind, began, and at the date of the proclamation hereinafter mentioned had almost completed, a fish-trap situate in navigable waters within 2,000 feet of the shore of Annette Island. Defendants design to complete said trap and to have it ready for effective operation by the time of the commencement of the run of fish, to wit, about July

1st. On the 28th day of April, 1916, the President issued a proclamation reserving

“the waters within three thousand feet from the shore at mean low tide of Annette Island, Ham Island, Lewis Island, Spire Island, Hemlock Island, and the adjacent rocks and islets * * * also the bays of the said islands, rocks and islets are hereby reserved for the benefit of the Metlakahtlans and such other Alaskan natives as have joined them or may join them in residence on these islands.”

The Government by this suit seeks an injunction to prevent the defendants from operating said trap and to compel the removal of said trap, basing its suit on the claim that the continuance of the trap at the *locus quo* is in defiance and violation of the terms of the Act and the proclamation, and is also in violation of section 10 of the Rivers and Harbors Act approved March 3, 1899.

Defendants contend that the Act itself does not reserve any water and that the proclamation is unauthorized so far as it attempts to reserve any part of the waters and so is null and void, and that the trap is not an obstruction to navigation and so does not come under the inhibition of the Rivers and Harbors Act aforesaid. [30]

Considering the Act and proclamation, the following is to be considered:

The Attorney General, having been asked for an opinion as to whether or not the President could lawfully set apart a body of public domain for the

use of alien-born Indians, on February 28, 1887, gave it as his opinion that the power of the President "to declare *permanent* reservations for Indians to the exclusion of others on the public domain does not extend to Indians not born or resident in the U. S.," and that it would require an Act of Congress to make the reservation aforesaid:

Notwithstanding that no Act in the premises was in force (but probably in contemplation of the passage of such an act), a tribe or body of Indians known as Metlakahtlans did emigrate from British Columbia and settle upon Annette Islands. There they built and occupied houses, constructed and furnished in the way of the white man, erected churches and schools, planted small gardens, established a rude form of local self-government, and generally attained a state of civilization far superior to that of most natives and of some white men. The principles of humanity naturally dictated that these people should be encouraged in the exercise and development of the intelligence, thrift and industry of which they had given abundant evidence; and too, manifestly it was highly desirable that native Alaska Indians should, if possible, be induced to join them. So on March 3, 1891, Congress inserted the following provision in the Act approved March 3, 1891, entitled "An Act to repeal the Timber Culture Laws" (26 Stats. L. 1101), to wit:

"Sec. 15. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in South-

eastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior."

In passing this Act, Congress must be held to have known (what everyone else knew) that the Indians of Alaska are fisher [31] folk and hunters and trappers and largely, if not entirely, depend for their livelihood upon the yield of such vocations—it must be held to have known that without the food yield of the sea these Indians could not survive, for the Annette Islands would not of themselves "as land" afford a subsistence for a community of souls—there being little or no agricultural land on the Islands, or for that matter in all Southeastern Alaska. Not only is the Act an encouragement to remain extended to those Metlakahtlans "who had recently emigrated," but it is also an invitation to come held out to all Metlakahtlans and to such Alaska natives as may join them. The Act affords no promise that the privilege conferred is to be exercised in whatsoever manner the Indians may choose—on the contrary, the use granted is to be held and exercised "under such rules and regula-

tions as may be prescribed from *time to time* by the Secretary of the Interior." In other words, the "Great White Father" says to the Metlakahtlans and to "all other Alaskan natives who may join them," "You are welcome to come to these islands, to make your homes here, to make a livelihood here, to pursue such occupations as you may see fit. My Secretary will make some regulations and restrictions for your welfare, your happiness and your protection. You may use these islands subject only to such rules and regulations, and under such restrictions as he may make."

Good faith undoubtedly requires that the rules and regulations or restrictions spoken of are not to be taken as rules and regulations or restrictions binding only the Indians, but as rules, regulations and restrictions binding upon all other persons. This is necessary in order that the thing to be done may be effected according to the true intent, meaning and purpose of the donors, and in justice to the donee. The object to be accomplished is that these Indians may work out their destiny—that they may develop into good citizens, useful and happy,—not alone for their own sake but for the good of the country and in the interest of humanity and civilization. A reservation is [32] created for them—not the ordinary Indian reservation, within whose limits they are to be *confined*, but a reservation which shall be their home if they choose to make it their home—where the race may multiply and increase, and develop under the guiding hand of a high officer of the Government.

It has been suggested that when the Government grants the upland, the high-water mark is the boundary of the grant, and that in strictness these Indians are entitled to the exclusive use of only so much as is above high-water mark; but the privilege conferred bears no analogy to a grant of land—nothing is granted to these Indians except a privilege, and that, too, only “until otherwise provided by law.” No title is parted with by the Government. To hold that the privilege extended means nothing more than that the Indians are to have the use of the upland only is to say that Congress is engaged in the business of luring the unsuspecting, of cheating and deceiving them. The language is not to be construed in the strict, narrow, legal sense which obtains between equals dealing at arm’s-length, but in a broad and generous sense in which words are to be taken when one of superior power, knowledge and intelligence deals with an inferior—the language used must not be so interpreted “as to justify the charge that the Government has laid a trap” for these people.

To construe the invitation extended by the act with all the strictness of a legal conveyance of real estate would defeat the very object contemplated by the act.

Good faith also suggests that when Congress set apart “that body of lands known as the Annette Islands,” it ought not to be held to mean only land—it must be held to mean “the lands” generally and the adjacent sea to a reasonable extent, in which alone were to be found that which made liv-

ing upon the land a possibility—a practicability. The very generality of the terms used, to wit, “the body of lands,” “Annette Islands,” would seem to indicate that Congress did not mean to dole out its generosity in inches, feet, or even acres, but that it meant to confer a useful, practicable, [33] benefit to the Indians by securing to them a useful and practicable home.

The “body of lands known as Annette Islands” should be taken to mean “that region” known as Annette Islands,—as if one should say that body of lands known as Alaska, or that body of lands known as the Philippine Islands or Porto Rico.

Congress meant to make an Indian reservation. Alaska, it is true, is not Indian country in the conventional sense of the word, and the aborigines of Alaska have never been compulsorily herded upon reservations, yet it is Indian country so far as Congress chooses to make it such (U. S. vs. Nelson, 29 Fed. 202), and “that body of lands known as Annette Islands” is an Indian reservation because Congress has chosen to make it such. From that day to the encroachment by the defendant complained of by the complaint the Indians and the public generally have treated the Act as one reserving the waters immediately contiguous to the high land of these islands as well as the high land itself.

It is in evidence from the date of the Act until the irruption of these defendants in 1916, a period of twenty-five years, no attempt has been made to encroach upon the use by the Indians of the islands or the waters adjacent thereto. (Verney’s affi-

davit.) On the land they have built their houses, while the waters surrounding the islands have furnished them with a bountiful supply of fish. At first the only use for the fish caught was for immediate consumption or for smoking for use later by the tribe and those with whom they bartered, but with the development of the fish-canning industry in Alaska, a wider and more lucrative market for fish *spring* into existence. The Indians, under the directions of him who had brought them out of barbarism, established and for some time operated a salmon cannery. This not only supplied them with a very edible variety of food, but also furnished employment to many of the tribe, and other Indians.

Congress had the right to do as it pleased with these lands and waters. The people of the United States, succeeding to and [34] exercising the prerogative of the British Crown and the powers of Parliament, certainly have plenary power, through their representatives, over the lands and waters of the United States—to make reservations of land for public purposes—to grant exclusive rights of fishery, and even to close navigable waters.

(2 Farnham on Waters, sec. 370, p. 1373.)

The Congress, representing the people of the United States, has under the Constitution the power to dispose of and make all needful rules and regulations respecting the Territory of other property belonging to the United States.

(Constitution, Article IV, Section 3.)

Annette Island, and all islands, lands and waters in Alaska, were, on March 3, 1891, the property of

the United States. Congress made this Reservation for these Indians and has confirmed it in later legislation (6th proviso of Act of May 14, 1898, 30 Stats. L. 409; Compiled Laws of Alaska 1913, sec. 92), and has strikingly manifested its approval of the Metlakahtlans by the Act of March 4, 1907 (34 Stats. L. 1411; Alaska Compiled Laws 1913, sec. 24), allowing them to own motor boats and take out licenses as engineers and pilots and masters.

Some time in April of 1916 defendants went upon the waters within about 2,000 feet of the low-water mark of Annette Island and began the construction of a fish-trap, such as is commonly used by the canneries-men of Alaska whereby to secure a supply of salmon for canning. Such fish-traps are very effective for the purposes for which they are intended, and unless such contrivances are thoroughly regulated and supervised they will eventually completely exhaust the supply of fish. It appears from the evidence that the islands are very advantageously situated in this regard—they are comparatively near the open sea, and large quantities of salmon coming therefrom and making their way to their spawning grounds, pass within the three thousand foot limit fixed by the President's proclamation herein mentioned. It also appears that fish-trap sites are not only becoming [35] very scarce farther inshore, but also the nearer the open sea the fish are caught the better they are for canning purposes. (Burckhardt's testimony.)

The run of fish at Annette Island does not com-

mence until about July 1st of each year, and before the webbing or netting was put upon the trap in question the President issued the said proclamation. That proclamation in terms is more specific than the terms of the Act. The Act does not say anything in specific terms about "3,000 feet" of the shore of Annette Island, but the proclamation does.

The power of the President to withdraw land or water which the United States owns and over which it has exclusive jurisdiction and devote it to use for the public good can hardly be successfully denied. Such power has been exercised from the earliest times in the creation of Indian reserves and military and naval reserves and as sites for fortifications, etc. Indian reservations are reservations for the public purposes. (17 Opinions Atty. Gen. 260.)

"An Indian reservation is part of the public domain set apart by the proper authority for the use and occupation of a tribe or tribes of Indians. It may be set apart by an act of Congress, by a treaty, or by an executive order."

Wolcott vs. Des Moines, 5 Wall. 681.

Grisar vs. McDowell, 6 Wall. 663.

U. S. vs. Payne, 8 Fed. 888.

43 cases Brandy, 14 Fed. 539.

It is not unreasonable to construe the Act itself as a reservation not alone of the land but also of a reasonable extent of waters immediately adjacent thereto, which may be necessary to effect the objects and purposes of the Act interpreted in the light of circumstances and conditions. For the Ex-

ecutive so to construe it and to make rules and regulations and restrictions in accordance with such construction is not to usurp legislative functions—it is but to execute the law in its true scope and meaning.

By the Constitution (article 2, section 3) it is made his duty to “take care that the laws be faithfully executed”; Mr. Justice Miller has asked, “Is this duty limited to the enforcement [36] of the Acts of Congress according to their express terms, or does it include * * * all the protection implied by the nature of the government under the constitution?”

(In re Neagle, 135 U. S. 64—16.)

Presidential reservation of a portion of the sea, under an Act reserving in terms only “lands,” finds precedent in the action of President Harrison, who by his proclamation of December 24, 1892, set apart “Afognak Island, Alaska, as a public reservation, including use for fish culture station, *and its adjacent bays and rocks and territorial waters*, including among others the Sea-lion Rocks and Sea Otter Island,” and said proclamation contained an express warning to all persons “not to enter upon or occupy the tract or tracts of land *or waters* reserved by this proclamation, *or to fish in or use any of the waters herein described or mentioned*, and that all persons or corporations now occupying said island, or any of said premises, except under said treaty shall depart therefrom.” (27 Stats. L. 1052; Compiled Laws of Alaska, 1913, page 174.)

It will be seen that this is a very extensive reservation of waters and a very drastic curtailment of the rights of both fishery and navigation, and yet the only Act of Congress on the subject which I have been able to find is contained in the 14th section of said Act of March 3, 1891, as follows:

“That none of the provisions of the last two preceding sections shall be so construed as to warrant the sale of any ‘lands’ (note the word ‘land’—R. W. J.) * * * which shall be selected by the United States Commissioner of Fish and Fisheries *on the island* (note the words ‘on the island’) of Kodiak *and Afognak* for the purpose of establishing fish culture stations.”

This reservation has never been directly attacked, but in the case of *Russian American Co. vs. U. S.*, 199 U. S., page 579, the Supreme Court say:

“As the President exercised the rights thus reserved, and declared the whole island appropriated for the purpose of establishing a fish-culture station, and warned all persons to depart therefrom, it is clear that the rights, if any, previously acquired by the settlement were terminated by the proclamation.”

So far as I have been able to ascertain, the action of President Harrison in making the [37] reservation include the water for a distance of 1,000 feet of the shore has never been characterized as “an attempt to govern America by proclamation.”

I am forced to the opinion that the area marked

on the plat accompanying the proclamation of the President in evidence in the case at bar is lawfully reserved—that it is a reasonable reservation—a necessary one—for public purposes—“of territory or other property belonging to the United States,” and that defendants are trespassers.

But it is said that even granting that the intent, meaning and scope of the reservation in the Act is broad enough to include the area within 3,000 feet of the low-water mark, or granting the validity of the President's proclamation, still the United States has no equity for an injunction because it has no pecuniary interest.

This suit is brought by the Government in its capacity as Sovereign as well as in its capacity as Lord Paramount of the Land and the Water. The sacred faith of the nation is pledged to these Indians—the latter are invitees of the Government—The obligation on the part of the Government to live up to its obligations is enough to give it standing in equity—even if there were no other considerations.

In *U. S. vs. World's Exposition*, 56 Fed. 630, where the standing of the Government in a suit for injunction was challenged on the ground of lack of pecuniary interest, the Court, after deciding that the Government did in fact have a pecuniary interest, observes (p. 638, bottom):

“and besides it is under the highest obligations of honor and law to protect the property and interest of foreign nations and of the sev-

eral States of the Union, and of all exhibitions brought here by its invitation. * * * Having such * * * and having no other means of enforcing obedience to its regulations, the Government is entitled to the assistance of the Court. * * * There are other rights and equities quite as sacred as dollars and equity protects against injuries which cannot be measured in money. * * * ”

and on page 640: [38]

“The right of the Government to maintain a Bill in Equity on the ground of obligation or duty either to an individual or to the public when it had no pecuniary interest is affirmed in several instances by the Supreme Court.”

U. S. vs. S. J. Tin Co., 125 U. S. 273.

U. S. vs. Beebe, 127 U. S. 338.

U. S. vs. Marshall, 129 U. S. 579.

Cartner vs. U. S., 149 U. S. 662.

The foregoing considerations dispose of the case at bar and call for the issuance of an injunction as prayed for by the Government.

Plaintiff also bases the right to an injunction on the allegations in the complaint, and the proof offered in support thereof, that the defendants' structures are a hindrance to navigation and are in violation of the provisions of the Rivers and Harbors Act of 1899; so far as this contention is concerned, I am constrained to hold with the defendants—I do not think that the structures are a hindrance to navigation.

Findings and decree may be prepared in accordance herewith.

ROBERT W. JENNINGS,
Judge.

Filed in the District Court, District of Alaska,
First Division. Jun. 30, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [39]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 263-K. A.

No. 1468-A.

UNITED STATES OF AMERICA

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.

Bill of Exceptions.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1916. J. W. Bell, Clerk.
By —————, Deputy. [40]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 263-K. A.

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through or Under It or in
Privity With It,

Defendants.

BE IT REMEMBERED, that this cause came on regularly for trial on the 15th day of June, 1916, before the Honorable Robert W. Jennings, Judge of the above-entitled court, upon an order to show cause why the defendants should not be enjoined, during the pendency of the action, from maintaining a fish-trap in the navigable waters of the United States to the westward of Annette Island, within 3,000 feet of the shore of Annette Island; the plaintiff being represented by John J. Reagan, Assistant United States Attorney, and the defendants being represented by Hellenthal and Hellenthal, C. H. Hanford and J. M. Shoup, and all parties being regularly before the Court, the following proceedings were had:

The plaintiff, to maintain the issues on its part, read in evidence the affidavit of Walter J. Elliott

and Earl E. Jones, which was in words and figures as follows, to wit: [41]

*In the District Court for the District of Alaska,
First Division, at Ketchikan.*

No. 263-K. A.

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of Walter J. Elliott and Earl E. Jones.

United States of America,
District of Alaska, Ketchikan,—ss.

Walter J. Elliott and Earl E. Jones, being severally duly sworn, each for himself and not one for the other, on oath depose and say: That Walter J. Elliott, the above-named deponent, is the Captain of the gas tug-boat "Leonine," and that E. E. Jones, the above-named deponent, is the engineer of said tug-boat; that on Sunday, May 21st, 1916, at 3:50 P. M. they left Metlakatla, Alaska, on said tug-boat, with said Elliott in charge thereof as Captain and said Jones as engineer thereof, and that they proceeded on said tug-boat thereupon to the west side of Annette Island, upon which island said Metlakatla is situated, to a point about four miles from Metlakatla aforesaid, and less than two thousand

feet south of Cedar Point on said Island, and there saw a fish-trap in process of construction, situate in the waters of Alaska surrounding said Island and about two thousand feet from the shore thereof; and then and there saw a crew of men putting wire webbing on the hearts of said trap, new piling for which had recently been driven; that the webbing on the pot and spiller of said trap had already been placed thereon; that they also saw the tug-boat "William T. Muir" tied up near said trap, also then and there saw a pile-driver with no name thereon which affiants could discover, and also then and there saw the scow "Wanigian," but do [42] not know the names of the persons then and there working nor of the owners of said trap.

WALTER J. ELLIOTT,
EARL E. JONES.

Subscribed and sworn to before me this 31st day of May, 1916.

[Seal] C. Z. DENNY,
Deputy Clerk of District Court, Dist. of Alaska, Division No. 1.

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of P. E. Harris, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
First Division, at Ketchikan.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of P. E. Harris.

United States of America,
District of Alaska, Ketchikan,—ss.

P. E. Harris, being first duly sworn, on oath deposes and says: That he has heard read the affidavits of Walter J. Elliott and Earl E. Jones, copy of which is hereto attached, and knows the contents thereof. That within sixty days prior to the date hereof, the exact date he not being able to state, he had a conversation with Mr. Tom Heckman in the Stedman Hotel in Ketchikan, Alaska, concerning the trap mentioned in the attached affidavit; that said Tom Heckman is the Superintendent, Manager or Foreman of the Alaska Pacific Fisheries, a corporation, and in said conversation said Tom Heckman told affiant that his Company, to wit: [43] said Alaska Pacific Fisheries, was constructing said trap, and asked what he, Mr. Harris, intended to do in the matter, and affiant then and there told said Heckman that it was up to the Government of the United States; said Heckman then and there told

affiant that he, Heckman, had instructions to continue the construction of said trap from said Company or corporation, and that he, Heckman, also wanted to drive another trap for said corporation in said waters; that said Heckman, at that time said he knew about the lease then existing between the United States and affiant, and of the proclamation of the Government about to be published in regard thereto, and that his said Company also knew thereof.

P. E. HARRIS.

Subscribed and sworn to before me this 31st day of May, 1916.

[Seal]

C. Z. DENNY,

Deputy Clerk of District Court, District of Alaska,
Div. No. 1.

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of Harry F. Geil, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska, First
Division, at Ketchikan.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of Harry F. Geil.

United States of America,
District of Alaska, Ketchikan,—ss.

Harry F. Geil, being duly sworn, on oath deposes and says: That during the first week of May, 1916, the exact date I am unable to state, I was at the west shore of Annette Island in the [44] First Division of Alaska, and then and there I saw the piling for a complete fishing trap which had just prior to that time been driven; that said trap was and is within three thousand feet of the shore of said Annette Island, and was and is approximately within two thousand feet therefrom, and said trap is purported to have been erected by the Alaska Pacific Fisheries, a corporation.

HARRY F. GEIL.

Subscribed and sworn to before me this 31st day of May, 1916.

[Seal]

J. W. BELL,

Clerk of District Court, Dist. of Alaska, Division
No. 1.

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of Edmund Verney, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska, First
Division, at Ketchikan.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of Edmund Verney.

United States of America,
District of Alaska, Ketchikan,—ss.

Edmund Verney, being first duly sworn, on oath deposes and says: That I am a Metlakatlan Indian, residing on Annette Island; during the year 1915 I was the Mayor of Annette Island; Annette Island has been my home ever since it was made a Reservation by Act of Congress approved March 3, 1891, to which Act reference is hereby made; that there have never been any fish-traps driven in the waters surrounding said Annette Island until the year 1914; during the year 1914 a trap was driven at Annette Point on the southeast short of said Island by John Davis & Son [45] who are Metlakatlan Indians, on a permit issued by the Secretary of the Interior of the United States, and under the authority and by virtue of said permit, permission to maintain said trap for one year being granted thereby, and permission to maintain said trap for another year, to wit, for 1915, was thereafter granted under the authority of the said Secre-

tary of the Interior; that in the year 1915 three permits were granted to Metlakatla Indians, to wit, Charles Brendible, Harry Lang and said John Davis and Son, to drive and maintain fishing traps for that year on the west coast of Annette Island, and I signed said permits as said mayor under authority of said Secretary of the Interior; that permission was never granted to any white man to drive or maintain any fish-trap in the waters surrounding Annette Island aforesaid; that no person other than a Metlakatlan Indian ever attempted to drive or maintain any fish-trap in said waters until the year 1916, during which year I am informed and believe that the Alaska Pacific Fisheries, a corporation, composed of people other than Metlakatlan Indians have driven and are maintaining a fish-trap on the west shore of Annette Island aforesaid, at Cedar Point; that the rights of the Indians residing on said Annette Island have always been maintained by them and respected by other people until the year 1916, when said Alaska Pacific Fisheries, a corporation, have claimed the right to have, constructed and maintain a fish-trap at said above-mentioned locations; and this last-mentioned instance is the first in which the right to drive and maintain fish-traps in defiance of the rights of the United States and of the Indian residents of said Annette Island under said Act of Congress approved Mar. 3, 1891, and of the subsequent proclamation of the President of the United States, dated April 28, 1916, has been attempted.

EDMUND VERNEY.

Subscribed and sworn to before me this 31st day of May, 1916.

[Seal]

D. NOLL,

Notary Public for Alaska.

My commission exp. Nov. 1, 1917. [46]

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of D. Noll, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
Division No. 1, at Ketchikan.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of D. Noll.

United States of America,
Territory of Alaska, Ketchikan,—ss.

D. Noll, being first duly sworn, on oath deposes and says: I am an assistant United States Attorney for the First Division of Alaska; I have heard read the complaint herein and know the contents thereof; that the lands and waters mentioned in said complaint are lands and waters of the United States, and are situated in southeastern Alaska, and are within the jurisdiction of this Court. That the said Annette Island and the whole thereof and *and* nearby islands has been made and is a reservation for the use of the Metlakatlan Indians and such other natives of

Alaska as may join them, which includes *ex necessitate* the waters surrounding the same and appurtenant thereto, and reserved from the use or occupation of any other person or persons, whatsoever. That said islands and the waters appurtenant thereto have been since the formation of said reservation in the sole, exclusive and peaceable possession of this plaintiff and said Metlakatlangs. That plaintiff has for many years aided and assisted said Metlakatlangs to develop along educational and industrial lines and in the matter of self-government, and as a part of such system of advancement is now encouraging and assisting them to engage in commercial fishing and the canning for commercial purposes of fish. That no person other than said Metlakatlan Indians has, [47] ever since the making of said reservation, been permitted by plaintiff to establish any fishing plants in the waters appurtenant to and surrounding said reservation. That the plaintiff has now made further arrangements for the upbuilding of said fishing industry for the benefit of said Metlakatlangs, and has encouraged them to drive traps for the purpose of catching fish in said waters, and to permit interference by others and to allow the maintenance and operation of other traps or structures in said waters would be disastrous to said plans of plaintiff. The defendant for the purpose, among others, of thwarting the plaintiff in its said plans and arrangements, and of annoying, harassing and injuring plaintiff therein, and destroying said scheme and injuring said Metlakatlangs, has driven a fish-trap on the west coast of said reservation at or near Cedar Point, and now

threaten, unlawfully and without right, and in defiance of plaintiff's rights and the rights and interests of said Metlakatlans, and after full knowledge and notice thereof, to maintain and operate the same, which if at all permitted will cause irreparable damage and injury to plaintiff and said Metlakatlans. That the erection of said trap is in violation of the Act of Congress approved March 3d, 1899, as set up in the complaint herein, in this, that no harbor lines have ever been established at Annette Island or on said reservation, and said trap is constructed in the waters of the United States without any authority from the Secretary of War, either prior or since the beginning of the same, and without the submission of any plans thereof or the approval thereof by the Chief of Engineers or said Secretary, and the plaintiff is entitled to a writ of injunction from this Court, preventing the maintenance thereof.

D. NOLL.

Subscribed and sworn to before me this 1st day of June, 1916.

[Seal]

C. Z. DENNY,
Deputy Clerk of District Court, Dist. of Alaska,
Division No. 1. [48]

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of D. Noll, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska, First
Division, at Ketchikan.*

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,
Defendants.

Affidavit of D. Noll.

Territory of Alaska,
Ketchikan Precinct,—ss.

D. Noll, being first duly sworn, deposes and says that he is Assistant United States Attorney for the First Division, District of Alaska; that pursuant to instructions from the United States Attorney for the First Division, District of Alaska, I went to Annette Island, Alaska, on the second day of May, 1916, and posted a notice on the fish-trap mentioned in the complaint herein and also delivered a copy of the same to Mr. Jack Meyers, a representative and employee of the Alaska Pacific Fisheries in the capacity of watchman of the said trap. Also that I mailed a copy of said notice to the said Company; receipt of which was acknowledged by the said Company by its attorney, C. H. Hanford, Esq., of Seattle, Washington. That the said notice so posted and delivered to the said defendant was as follows:

“Ketchikan, Alaska, May 2, 1916.

To Alaska Pacific Fisheries and Jack Meyers.

By virtue of a proclamation signed by the President April 28th, 1916, three thousand feet of waters contiguous to Annette Island, Alaska, has been set aside for the exclusive rights of [49] the Metlakatlans.

You are therefore hereby warned against trespassing on the said reserved area of waters and to cease driving or attempting to drive any traps for the purpose of catching fish within the said area and to cease fishing any traps within the said area.

D. NOLL,

Assistant United States Attorney.”

Subscribed and sworn to before me this 31st day of May, 1916.

[Seal]

J. W. BELL,

Clerk of District Court, Dist. of Alaska, Division
No. 1.

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of Charles D. Jones, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska, First
Division, at Ketchikan.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of Charles D. Jones.

United States of America,
District of Alaska, Ketchikan,—ss.

Charles D. Jones, being duly sworn, on oath says: I am the representative of the United States Bureau of Education, at Metlakatla, Alaska, with general supervision over the natives on Annette Island reserve. That the Government of the United States has recently made arrangements whereby the native inhabitants of said reserve may engage in commercial fishing, and operate a canning industry on said reserve as part and parcel of the Government's plan to better and further the industrial as well as the educational condition of said natives, and in furtherance [50] thereof the President of the United States recently issued a proclamation limiting certain waters surrounding said reservation, the same being waters of the United States, to said purposes; said waters are the shore waters and those contiguously beyond surrounding said reserve, in which the inhabitants of said reserve, the same being at present Metlakatla Indians, have fished ever since the creation of the reserve; that no others than the Indian inhabitants of said reserve have ever driven fishing-traps along the shores of said reserve, and that only upon permits granted by the Secretary of the Interior of the United States and by his authority, and the first permit being in the year 1914, and the next issues of permits being in the year 1915; that none others have ever driven traps in said waters or fished therein

or claimed rights therein as affiant is informed and verily believes, until the year 1916, when the defendants above mentioned began the erection of a trap on the west shore of said reserve near Cedar Point; that said defendant has been notified to cease operations at said point or in said waters, but has continued in defiance of said notice.

That the Government of the United States is now and for many years last past has been engaged in training the inhabitants of said reserve, with a view to making them industrious and self-supporting and self-governing, and said inhabitants place great reliance and faith in the said Government and in its plans and aims for them, so far as the same have been disclosed to them, and they feel that said defendant is a trespasser upon them and their waters and rights, and the moral effect of a continuance of said trap and the operation thereof in said waters will greatly weaken the Government in its endeavors in their behalf, and said reserve will be of little value to them if their fishing is encroached upon or taken away in any degree. That their greatest industry is fishing, and they will confine their fishing almost wholly to said waters if not molested.

CHARLES D. JONES.

Subscribed and sworn to before me this 31st May, 1916.

[Seal]

D. NOLL,

Notary Public for Alaska,

My commission exp. Nov. 1, 1917. [51]

Filed in the District Court, District of Alaska,

First Division, June 1, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of D. Noll, which was in words and figures as follows, to wit:

In the District Court of the United States for the District of Alaska, Division Number One, at Ketchikan.

No. 263—KA.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.

PACIFIC ALASKA FISHERIES et al.,
Defendants.

Affidavit of D. Noll.

D. Noll, being first duly sworn, upon oath deposes and says, that he is Assistant United States Attorney for the First Division, District of Alaska; that on the second day of May, 1916, A. D., he posted a notice on that certain fish-trap in question in the above-entitled action and personally delivered a copy of said notice to Mr. Jack Meyers, the watchman at the said trap, and further duly placed in the United States Mail a copy of said notice, addressed to the Pacific Alaska Fisheries, a copy of which notice is hereto attached and made a part of this affidavit; that in reply thereto he received a letter from Mr. Hanford, dated at Seattle, Washington, a copy of which said letter is hereto attached and made a part of this affidavit.

D. NOLL.

United States of America,
District of Alaska,
Ketchikan Precinct,—ss.

Subscribed and sworn to before me this 12th day
of June, 1916, A. D.

[Seal]

J. FILLMORE WARDER,

Notary Public for Alaska.

My Commission expires Aug. 29, 1918.

Rec'd copy of above, June 15, 1916.

HELLENTHAL & HELLENTHAL. [52]

**Letter, May 17, 1916, Alaska Pacific Fisheries to
D. Noll.**

C. H. Hanford,
Attorney & Counselor at Law,
Colman Building,
Seattle.

May 17, 1916.

D. Noll, Esq.,
Assistant U. S. Attorney,
Ketchikan, Alaska.

Sir:

Responding the notice over your signature addressed to "The Pacific Fisheries Co. and Jack Myers "referring to a proclamation signed by the President setting aside for the exclusive rights of the Metlakatlangs waters contiguous to Annette Island, and warning the parties addressed," to cease trespassing on the said reserved area and waters and to cease driving or attempting to drive any trap or traps for the purpose of catching fish within the said area and to cease fishing any traps within the said re-

serve," it is hereby assumed that said notice was intended for the "Alaska Pacific Fisheries, a corporation," which has under license lawfully issued by the Territory of Alaska, constructed a trap at a location previously occupied for taking Salmon and intends to drive another trap at a location previously occupied in public waters outside of the line of low tide and will maintain its right to take fish at said locations notwithstanding your notice aforesaid.

Said corporation denies that the President has lawful power to extend a reservation beyond the boundaries prescribed by an Act of Congress or to include Public navigable water.

In one way or another the validity of the rights hereby asserted will have to be adjudicated and I respectfully suggest that since this business is in your hands to some extent, as appears by said notice, the most expeditious manner of making an issue will be for you to initiate judicial proceedings.

Whoever may without judicial process use force to destroy the property of the Alaska Pacific Fisheries or to impede its [53] fishing operations under its license will be held to accountability for such wrongdoing.

Respectfully,

ALASKA PACIFIC FISHERIES,

By C. H. HANFORD,

Attorney.

Filed in the District Court, District of Alaska,
First Division. Jun. 15, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy.

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of Ernest P. Walker, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
Division No. One, at Ketchikan.*

No. 1468-A.

No. 263-K. A.

UNITED STATES OF AMERICA

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.

Affidavit of Ernest P. Walker.

Territory of Alaska,
Juneau Precinct,—ss.

Ernest P. Walker, being first duly sworn, on oath deposes and says: I am Inspector Alaska Service, Bureau of Fisheries, and, acting under such instructions from my Department to co-operate with the Department of Justice in preventing the operation of the trap of the defendant herein at Annette Island and to proceed to the location thereof for the purpose of making investigations as to the conditions. I went to Annette Island and ascertained the position and location of said trap and found that the said trap is situated in Smugglers Cove on the west coast of Annette Island at Cedar Point; that off shore at that point are situated numerous rocks and reefs for some considerable distance waterward. That this trap is, as nearly as I could ascertain by

[54] sighting, practically entirely within the headlands of Smugglers Cove; that in sighting I was practically at the line of mesne low tide off Cedar Point and sighted to a like point on the southern headline of said cove; that had I sighted from the reef at Cedar Point the said trap is entirely within said Smugglers Cove. The lead of said trap begins parallel with the main reef at Cedar Point and about 175 yards from the innermost point of the cove and the outer extremity of the trap from said innermost point of the cove is not to exceed 1780 feet distant and is wholly within the waters of said cove measured from the reef aforesaid to the southern headland. That at the time I saw said trap, the heart walls were opened by means of shove-downs such as were used on fish-traps in the year 1914, and on account of which various prosecutions were had in this court. The tunnel thereof leading to the pot was closed. There is no way for a person having charge of said trap to weather the season without living upon said Annette Island. At present the watchman is on a small house scow anchored between the reef and the lead, but that arrangement would not afford protection in a storm.

I have marked out on a chart which I have signed "Ernest P. Walker—No. 1," the approximate position and location of said trap, and a line showing the 3,000 ft. limit mentioned in the President's proclamation, at Cedar Point, and I have also made a sketch of said trap, to measurement, which I have marked "Ernest P. Walker—No. 2," which may be used in connection with this affidavit.

There has never to my knowledge been any trap located at this point previously.

I made this trip and these investigations pursuant to telegraphic instructions from my Department as aforesaid.

ERNEST P. WALKER.

Subscribed and sworn to before me this 14th day of June, 1916.

[Seal]

INA S. LIEBHARDT,

Notary Public.

My Commission expires September 29, 1919.

Rec'd copy of above June 15, 1916.

HELLENTHAL & HELLENTHAL. [55]

Filed in the District Court, District of Alaska, First Division. Jun. 15, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy.

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of John J Reagan, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
Division No. One, at Ketchikan.*

No. 1468-A.

No. 263-K. A.

UNITED STATES OF AMERICA

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.

Affidavit of John J. Reagan.

Territory of Alaska,
Juneau Precinct,—ss.

John J. Reagan, being first duly sworn, on oath deposes and says: that he is Assistant U. S. Attorney of the First Division of District of Alaska. That this suit was instituted by him on behalf of the Attorney General with his approval. That the affiant is informed by various Department employees and believes and therefore alleges that the matter of issuing the proclamation of the President herein was a subject of discussion between the War Department, the Interior Department, the Department of Commerce and the Department of Justice of the United States, and after due deliberation and consideration the President issued the proclamation herein. That the area of waters reserved by the said proclamation was with the consent of the Secretary of War, and the matter of placing traps therein by the Metlakahtla Indians was considered by the Secretary of War and permission given by the War Department for their erection whenever desired, and instructions thereto given in letter of May 13, 1916, written by the Secretary of War and addressed to the Secretary of the Interior, carbon copy of which is hereto attached and referred to in this affidavit. That for many years the Government of the United States through its proper departments has been engaged [56] in improving the habits and conditions of the Indians upon this reserve and

that for the purpose of encouraging the fishing industry among the natives and otherwise aiding them to advance in the ways of civilized life, industrially, educationally and commercially, the Government of the United States through its President has reserved the waters as described in the proclamation for the use and benefit of the Metlakahtlans and such other Alaskan natives as have joined or may join them in residence on these islands, to be used by them under the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce, and warning was expressly given to all unauthorized persons not to fish in or use any of the waters therein described or mentioned. That the President of the United States is authorized by the laws of the United States to establish the limits of various of the Indian reservations and that in issuing the proclamation aforesaid he was in fact delimiting the outer water boundaries of the said reservation. That no permission has been given to the defendant or any other person other than those mentioned in said proclamation, to locate traps on said islands. That the said waters and the lands underneath the same belong to the United States; that they are navigable waters of the United States. That under the Act of March 3, 1899, it was made unlawful to commence to build any structure in any of the waters of the United States unless authorized by the Secretary of War prior to the beginning of the same and upon plans submitted to and approved by the Chief of Engineers and the said Secretary, except within established harbor lines, and that no

harbor lines have ever been established in any of the waters surrounding or adjacent to said Annette Islands. That said structure of said defendant is unlawful under the terms of said Act of Congress, that it interferes with the plans and objects and business of the Government of the United States and that it is a purpresture and should be abated by order and decree of this Court. That the said defendant is a trespasser within said [57] waters. That said defendants have threatened to continue the maintenance of said trap and to take therein the salmon fish of said waters and to convert the same to their own use, and threaten to drive other traps within said waters at other locations and threaten to take fish at said locations, notwithstanding the establishment of said reservation and the orders and proclamations of the President of the United States. And affiant states that said defendant will do so unless restrained and compelled to remove said obstructions and structures by the order of this Court. That the maintenance and operation of said trap upon said island and in said waters has a great deterrent effect upon the efforts of the plaintiff in behalf of its work and business with reference to the inhabitants of said reserve; that said inhabitants are Metlakahtlan Indians and within a lifetime were in a state of savagery, and their relations with the Government have been hindered and interfered with by reason of statements made to them by persons unfriendly to the purposes and objects of the plaintiff with reference to said inhabitants; and the plaintiff having communicated to said in-

habitants its purposes and objects in the premises, to now permit unauthorized persons to interfere adversely to the purposes of the Government in this behalf would cause a demoralization of said inhabitants and partial if not entire distrust of the plaintiff and its intention and power to carry out and fulfill its promises and purposes as herein set forth and would tend to wholly destroy the objects and purposes of the plaintiff in behalf of said inhabitants and cause said inhabitants to lose confidence in the Government of the United States.

JNO. J. REAGAN.

Subscribed and sworn to before me this 14th day of June, 1916.

[Seal]

INA S. LIEBHARDT,

Notary Public.

My commission expires September 29, 1919.

Rec'd copy of above June 15, 1915.

HELLENTHAL & HELLENTHAL. [58]

**Letter, May 13, 1916, Acting Secretary of War to
Secretary of the Interior.**

COPY.

WAR DEPARTMENT.

WASHINGTON.

May 13, 1916.

The Honorable,

The Secretary of the Interior.

Sir:

Referring to your letter of March 28th, 1916, transmitting a map showing the area around Annette and various other islands in Alaska, desired

to be reserved for the use of the Metlakahtla Indians, I have the honor to transmit herewith a chart on which is indicated by broken black lines the areas adjacent to Annette Island, to which fish-traps that the Metlakahtlans may desire to erect should be confined so far as practicable, in order that no obstruction to navigation may result. No traps should be placed in the buoyed channel immediately south of Annette Island, nor should access to the anchorages or the wharves at Ketchikan be obstructed.

Where this black line differs from the limits of the reservation laid out by the Interior Department, the limiting line of the reservation is indicated by red dotted line.

It is believed that favorable action without undue delay can be taken by this Department on applications by the Metlakahtlans for permission to erect and maintain fish-traps within the areas shown by the broken black lines. Applications for locations outside of those areas will however require an examination to determine whether or not they will interfere with navigation, before action can be taken.

Very respectfully,
(Signed) WM. M. INGRAHAM,
Acting Secretary of War.

One inclosure accomp. viz.: Chart, copy of 78187/317.

Filed in the District Court, District of Alaska, First Division. Jun. 15, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy. [59]

The plaintiff, to further maintain the issues on its part, read in evidence the affidavit of John J Reagan, which was in words and figures as follows:

*In the District Court for the District of Alaska,
First Division, at Ketchikan.*

No. 263—K. A.

No. 1468—A.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, etc., et al.,
Defendants.

Affidavit of John J. Reagan.

United States of America,
Territory of Alaska, Juneau,—ss.

Jno. J. Reagan, being first duly sworn, on oath says: That he is the Assistant United States Attorney, who appears on behalf of the plaintiff in this hearing on order to show cause. That for many years prior to the commencement of this suit one William Duncan was, by permission of the plaintiff, engaged on the reserve mentioned in this action in teaching the inhabitants thereof; that for some years there had been a disagreement between him and the plaintiff in regard to the affairs upon said reserve, which resulted finally in the plaintiff assuming all control of affairs on said reserve; that growing out of said disagreement said Duncan used every means in his power to destroy the faith of the inhabitants of said reserve in the plaintiff, and in its

motives, aims and powers, and has a small following upon said reserve whom he is able to so control; that said reserve was made for the use of the Metlakatlangs and native Alaska Indians who might join them upon said reserve; but the defendant since the beginning of this action through its agents has invaded said reserve and has circulated a form of affidavit of which the attached paper is a copy, and has endeavored to get some of the inhabitants of said reserve to sign same, and affiant is uninformed [60] as to how many signers said defendant procured thereto; but states that it might be possible to get those so controlled by said Duncan or some of them to so sign and not others; that the trespassing upon said reserve by said defendant as aforesaid upon the heels of its defiant entry into said reserve and its meddling with the plans and business of the plaintiff is one of the evils that it is the object of this bill to prevent and to keep off from said reserve, not only for a time, but altogether all persons not authorized to enter thereon and thereby prevent them from interfering with the plans and business of the Government thereon. That owing to the said opposition hereinbefore mentioned, and after the plaintiff had assumed control of said reserve affairs, a cannery that had been upon the reserve was fired by some incendiary and destroyed, and as affiant is informed and believes for the purpose of further thwarting and opposing the plaintiff in its said business, and affiant is informed and believes and therefore states that arrangements have already been made for the building immediately of another can-

nery and other factories upon said reserve, and the presence of the defendant thereon and its activities is a trespass and a damage to this plaintiff which cannot be remedied except by the order of this court continued as prayed.

JNO. J. REAGAN.

Subscribed and sworn to before me this 15th June, 1916.

[Notary's Seal] INA S. LIEBHARDT,
Notary Public for Alaska.

My commission expires September 29, 1919.

Rec'd copy of above June 15, 1915.

HELLENTHAL & HELLENTHAL.

**Blank Form of Affidavit Referred to in Affidavit of
John J. Reagan.**

*In the District Court, for the Territory of Alaska,
Division Number One, at Ketchikan.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants. [61]

United States of America,
Territory of Alaska,
At Ketchikan,—ss.

We, the undersigned being severally duly sworn, each for himself and not one for the other, on oath deposes and say:

That he is now a resident and has been a resident

of the town of Metlakatla for many years, immediately last past; that the said town of Metlakatla is situate upon Annette Island, in the Territory of Alaska, and within the jurisdiction of this Court.

That on account of the Salmon Cannery at Metlakatla being recently destroyed by fire, and as said cannery will not be rebuilt during the present year, the residents of Metlakatla and the Annette Islands, will in no way be injured by the catching of salmon or other fish in the fish-trap now driven and completed at Cedar Point off the westerly shore of Annette Island, at about four miles in a westerly direction, from the said town of Metlakatla, during the fishing season of the present year, but on the contrary the operation of said fish-trap during the present year will be highly beneficial to the inhabitants of the said town of Metlakatla and the Annette Islands, for the reason that the fish caught in said fish-trap will supply the Chomley cannery with Salmon during the present fishing season, such cannery being only some thirty miles from said Metlakatla;

That the said cannery at Chomley gives employment to Metlakatlans while being operated, as the owners of said cannery have always furnished employment during fishing seasons to all Metlakatlans applying for work at said cannery when in operation.

That he has recently since the commencement of the above-entitled action, heard many of the residents of the said town of Metlakatla discuss the matter of the Cedar Point fish-trap not being allowed to operate by the Government, and that the general

sentiment of the residents is strongly in favor of the trap being fished by its owners.

That he believes that if a vote were taken of Metlakatlans [62] at this time, as to whether or not the said Cedar Point fish-trap should be operated or closed, that the vote would be almost unanimous in favor of the operation of the said fish-trap.

Subscribed and sworn to before me this 11th day of June, A. D. 1916.

Notary Public for Alaska.

My commission expires —, 191—.

Filed in the District Court, District of Alaska, First Division. Jun. 15, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

Whereupon the PLAINTIFF RESTED. [63]

DEFENSE.

Testimony of Charles A. Burckhardt, for Defendants.

BE IT FURTHER REMEMBERED, that the defendants, to maintain the issues on their part, called as a witness CHARLES A. BURCKHARDT, who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Charles Burckhardt?

A. Charles A. Burckhardt.

Q. You live at Yes Bay?

(Testimony of Charles A. Burckhardt.)

A. I do in the summer-time, during the fishing season.

Q. Do you know the Alaska Pacific Fisheries?

A. Yes, sir.

Q. You are president of that corporation, I believe? A. Yes, sir.

Q. Are you familiar with its properties in the Territory of Alaska? A. I am.

Q. What canneries does it operate in Alaska?

A. One at Chilkoot, one at Chomley and one at Yes Bay.

Q. Do you know where those canneries get their fish supply? A. Yes, sir.

Q. Do you know where Annette Island is?

A. Yes, sir.

Q. Do you know where Metlakahtla is?

A. Yes.

Q. Are you familiar with the waters surrounding Annette Island? A. I am.

Q. You have read the proclamation of the President reserving a strip of navigable water 3000 feet in width around Annette Island? A. Yes.

Q. You know where those waters are situated, included within that proclamation? A. I do. [64]

Q. You are familiar with the cannery and other appliances that used to be situated on Metlakahtla Island?

A. To some extent; I never was ashore on Metlakahtla.

Q. You were never ashore? A. No.

(Testimony of Charles A. Burckhardt.)

Q. You have seen them, however, in passing by?

A. Yes, I have seen the buildings.

Q. You have personal knowledge of the business and operations of the Alaska Pacific Fisheries?

A. I have; I am General Manager.

Q. And the canneries at Chomley and Yes Bay, I believe, are operated under your personal supervision? A. They are.

Q. Now, Mr. Burckhardt, where does the Chilkoot cannery get its supply?

A. From Lynn Canal and Icy Straits.

Q. No part of the fish supply of the Chilkoot cannery comes from the waters surrounding that island? A. They do not.

Q. Where does the Yes Bay cannery get its supply of fish?

A. From the waters in the vicinity of Yes Bay, Beahm Canal, Clarence Straits and from these traps in the water surrounding Annette Island.

Q. To what extent is the Yes Bay cannery supplied with fish from the waters surrounding Annette Island?

A. It would be pretty hard for me to give you an estimate on that; it would depend a good deal on how the fish are running, whether we would get them for our Yes Bay cannery or for our Chomley cannery; the two canneries are run pretty much together. We figured in making up our requirements for the season that out of these two traps we would get eight hundred thousand fish and they would go

(Testimony of Charles A. Burckhardt.)

to both canneries—the bulk of them would go to Chomley. [65]

Q. Some of these fish go to Yes Bay and the bulk of them go to Chomley? A. Yes.

Q. The bulk of the Yes Bay fish are caught in waters other than those surrounding Annette Island? A. Yes.

Q. The per cent of fish that are caught around Annette Island is comparatively small?

A. Yes, I would say somewhere about 10 per cent.

Q. What is the capacity of the Yes Bay cannery?

A. About 100,000 cases; we have made cans this year for 100,000 cases.

Q. In regard to the Chomley cannery, where is that situated?

A. Chomley cannery is on Chomley Sound, Prince of Wales Island, I would say about 30 miles from Annette Island.

Q. What per cent of the fish canned at the Chomley cannery are caught within the waters surrounding Annette Island?

The COURT.—Now, Mr. Hellenthal, you say within the waters surrounding Annette Island—

Mr. HELLENTHAL.—I mean within that reserve proclaimed by the President.

The COURT.—Very well.

A. I would say we figure on our estimated pack from Annette Island about 800,000 fish.

Q. When you say Annette Island—

A. I mean the waters.

Q. You mean the waters within 3,000 feet of the

(Testimony of Charles A. Burckhardt.)

shore, within this proclamation of the President?

A. Yes.

Q. What is the capacity of the Chomley cannery?

A. We have made cans there this year for 110,000 cases.

Q. What, if anything, has been done in the last year in regard to enlarging the Chomley cannery?
[66]

A. We have bought more machinery and made more cans this year.

Q. To what extent has the Chomley cannery been enlarged? A. 25,000 more fish.

Q. When did you commence the work looking towards the enlargement of this cannery?

A. Last February.

Q. When was the work completed?

A. During the spring—during this year.

Q. When was it completed with reference to the time the President's proclamation was issued?

A. It had all been completed—all our orders had been placed in the fall.

Q. All that work had been done prior to that time?

A. Yes, all our orders and all our obligations had been made during the fall.

Q. Now, what, if any, arrangements did you make with the view of getting fish for your Chomley cannery to meet its increased capacity?

A. This trap we put off Cedar Point.

Q. When did you take the first steps looking towards the construction of that trap?

A. It was some time in the month of August,

(Testimony of Charles A. Burckhardt.)

I don't remember the date, we had a diver come up.

Q. August of what year?

A. 1915. I had a diver come up and I went out with the diver and Mr. Heckman, superintendent of the Chomley cannery; I had him go down and sound whether we could drive off of this location; we found we could, and decided to put the trap in. I had been down there several times during the season and watched the fish run and saw there were a great many fish struck in along past that area.

Q. You are thoroughly familiar with the waters in that locality? A. Yes, sir. [67]

Q. And from your observation know how many fish ought to be caught in a trap at that point?

A. Yes—that is, as near as one can tell.

Q. Now, after you had determined that the site was feasible,—you have already explained what you did in the way of looking into the fish run at that point, Mr. Burckhardt, have you? A. Yes.

Q. What did you do in that regard?

A. I went down there several times with my boat, and laid off that shore there to watch the fish running along there.

Q. In what year was that?

A. That was last year; I went down there a couple of times the year before, but we didn't put it in last year, as we were not quite satisfied we could drive, and we finally struck on the idea of getting a diver and taking him up there.

Q. You were there in 1914 but you were not satis-

(Testimony of Charles A. Burckhardt.)

fied you could drive at that time and took a diver up in 1915? A. Yes, sir.

Q. What did you do after that, Mr. Burckhardt?

A. Ordered our piling and webbing for that trap.

Q. When did you order that? A. Last fall.

Q. That is the fall of the year, 1915?

A. 1915, some time during the month of October.

Q. Now, what did you do after that? Just tell the Court what you did in the way of building that trap—when you did it.

A. Well, the trap—I gave instructions to Mr. Heckman when he went north to drive that trap.

Q. When was that?

A. That was early in March.

Q. Of this year? A. Yes.

Q. When was the trap driven? [68]

A. I received a wire from Mr. Heckman on the 19th day of April that the trap had been completed.

Q. You don't know just when he started?

A. No.

Q. Now, when did you first learn of this proclamation of the President? A. On May 4th.

Q. How did you learn of it at that time?

A. I received a wire from the Assistant Secretary of the Interior advising me that the President had issued a proclamation setting aside the waters 3,000 feet surrounding Annette Island.

Q. Did you have any knowledge of the fact that the President intended to issue any such proclamation? A. I did not.

(Testimony of Charles A. Burckhardt.)

Q. Had you ever heard that the President was going to issue a proclamation until that time?

A. I did not.

Q. If you should be deprived of the right to operate that trap during the fishing season of 1916, Mr. Burckhardt, would you be able to put up your pack at your Yes Bay and Chomley canneries?

A. I don't think we would.

Q. To what extent would your pack be short at Chomley?

A. I figure that our entire pack would be short about 50,000 cases.

Q. That would be about the number of cases caught in that trap? A. Yes, sir.

Q. You have been in the fishing business for how many years, Mr. Burckhardt? A. Ten years.

Q. And are familiar with the habits of fish, and with the methods employed in catching fish?

A. Yes, sir.

Q. And know what quantity of fish a trap ought to catch under [69] given conditions?

A. Yes, sir.

Q. And you know how many fish this trap should catch? A. Yes, sir, under normal conditions.

Q. I want you to explain to the Court what kind of a trap it is—how it compares with the other traps in southeastern Alaska as to the number of fish that would be caught in it under normal conditions.

A. Well, it is a regular pile trap, double spiller trap and hearts, and lead of about 1,000 feet, and it

(Testimony of Charles A. Burckhardt.)

is placed where there is a good run of fish; a great many fish pass there—I think one of the best points I have ever seen.

Q. And the trap, in your judgment, ought to catch how many fish during the season of 1916?

A. That trap ought to catch 600,000 fish; I make that estimate because we have another trap on Gravina Island which I do not consider as good as this, and we caught that many fish there last year.

Q. What, if any, provisions have you made, and your company made, to pack the fish to be caught in that trap?

A. We have employed all of our labor, made our Chinese contracts, bought all of our supplies from our people.

Q. You have employed the labor and made your contracts with the view of making—

A. 110,000 cases.

Q. Now, tell the Court how many cases you would be short if that trap is not operated?

A. About 50,000 cases, as near as I can estimate under normal conditions.

Q. I would like to have you explain to the Court, Mr. Burckhardt, the way your labor is employed.

A. Our labor is employed by the season; all of the Chinese are employed at so much per case; the white men, some of them at so much a month; the foremen, superintendents and some of the [70] machinists are employed by the season.

Q. The contract you make with the Chinese labor is by the season at so much a case?

(Testimony of Charles A. Burekhardt.)

A. Yes, sir.

Q. And you have to pay for that labor whether you put up that many cases or not? A. Yes, sir.

Q. As I understand, you have employed Chinese labor to put up 110,000 cases at Chomley this season?

A. Yes, sir.

Q. And if you should put up 50,000 cases less, you would have to pay that labor anyhow?

A. Yes, sir.

Q. Pay for the 50,000 cases whether you put them up or not? A. Yes, sir.

Q. How is that about other supplies?

A. Well, take, for instance tin plate; there would be some depreciation on our tin plate we would have to hold over, we would have our money tied up in that, and we would have our money tied up in boxes.

Q. There would be a depreciation but no absolute loss?

A. Oh, no, but there would be some loss in the tin cans—there would be more or less loss in the tin cans on account of their being over salt water, they are bound to rust, and when we have carried them over there has been some loss.

Q. What would be your loss at Chomley cannery if this injunction should be granted? I want you to state in round figures how much you would be damaged if you could not fish that one trap on Annette Island this season.

A. I would say we would be damaged to the extent of about \$50,000.

(Testimony of Charles A. Burckhardt.)

Q. I wish you would explain to the Court of what that damage would consist.

A. In the first place, we would lose about \$15,000 on labor, [71] and I estimate if we have to carry that number of cans over there would be a depreciation of 25 cents a case on cans, which would be \$12,500; and figuring on 50 cents a case as our profit, would be \$25,000, and we have our money for this 50,000 cases of cans and materials tied up—it would amount to something like \$75,000 in material, that we would lose interest on, and have to pay insurance on it, on the actual materials there; in round numbers our loss \$50,000—actually our loss would be over \$50,000, but I will say \$50,000 to be safe.

Q. How much money, in round numbers, have you paid out for this year's supplies for your canneries?

A. For Yes Bay and Chomley alone we have paid out about \$500,000.

Q. For Yes Bay and Chomley, without regard to the Chilkoot cannery? A. Yes, sir.

Q. For supplies that do not include labor and things like that?

A. That is supplies, material and advances on labor contracts.

Q. That is, your Chinese labor contracts?

A. Yes, sir.

Q. Now, your damage at Yes Bay, if this injunction is granted—what would that be?

A. I am taking the total, I am figuring it altogether.

(Testimony of Charles A. Burckhardt.)

Q. Now, you are familiar with the cannery at Metlakahtla, you say?

A. I am not familiar with the Metlakahtla cannery.

Q. You know there was a cannery there?

A. Yes, I have seen it going past in the boat.

Q. You know it has since burned down?

A. Yes, sir.

Q. Now, how long do you say you have been in the fishing and cannery business? A. 10 years.

Q. Do you know how long it requires to construct a cannery and get it in operation? [72]

A. Yes, sir.

Q. You know that cannery was burned down—you are familiar with that? A. Yes, sir.

Q. There is no cannery there now? A. No.

Q. Could a cannery be built at Metlakahtla if construction work was commenced now, and be gotten in condition to put up a pack this year?

A. It could not.

Q. Could any fish caught in the waters surrounding Annette Island or elsewhere be put up at Annette Island this year?

A. No, it could not, it would be impossible—even if they could secure the material, machinery and supplies it would be impossible.

Q. When do the fish commence to run, Mr. Burckhardt?

A. The fish are starting to run now; the big run is on from the middle of July to about the middle of August.

(Testimony of Charles A. Burckhardt.)

Q. When does it end?

A. The run is practically over by the first of September.

Q. Mr. Burckhardt, you are familiar with the waters in the vicinity of Cedar Point?

A. Yes, sir.

Q. And the locality of the trap? A. Yes, sir.

Q. How have you conducted your fisheries in the years gone by with reference to compliance with the laws in the construction of traps?

Mr. REAGAN.—I don't see how that is material in this case, if the Court please.

Mr. HELLENTHAL.—I will withdraw the question.

Q. What have you done, Mr. Burckhardt, in connection with the construction of this trap at Cedar Point as to complying with [73] existing acts of Congress in relation thereto?

Mr. REAGAN.—I object to that as immaterial.

The COURT.—Overruled.

Q. How is the trap situated with reference to other fish-traps—that is what I mean?

A. There is no other fish-trap near it.

Q. When you say near there, what distance is it to the nearest fish-trap? A. None within 4 miles.

Q. Either laterally or any other way, from the fish-trap? A. In no way.

Q. How is this trap situated with reference to the shore land of Annette Island?

A. It extends out into the channel, out into deep water.

(Testimony of Charles A. Burckhardt.)

Q. Is not up on the tide-lands? A. No.

Q. How far below tide-land?

A. It is driven below low-water mark.

Q. Considerably below low-water mark?

A. Yes, sir.

Q. Situated wholly in deep water? A. Yes, sir.

Q. Now, Mr. Burckhardt, what, if anything, have you been doing in your canneries in the way of employing the Metlakahtla Indians?

Mr. REAGAN.—I object to that as immaterial.

The COURT.—Overruled.

A. We have always given employment to natives of Metlakahtla; we have got a few of them in our employ at the present time.

Q. You have already employed some for this year?

A. Yes, sir; and they would have worked for us even if the cannery at Metlakahtla had been operated.

Q. If you should be deprived of the right to operate your [74] cannery at Chomley to its full capacity would you be able to employ as many of those natives as you would if it was operated to its full capacity? A. No, we would not.

Q. If you are allowed to operate the trap this season, during the pendency of this suit, where would you get your native labor from, to a large extent at least?

Mr. REAGAN.—I object to that as immaterial.

The COURT.—Overruled.

(Testimony of Charles A. Burckhardt.)

A. The Chomley cannery always get their Indian help from Metlakahtla.

Q. Always have? A. Yes.

Q. And intend to get them from there in the future?

A. Always have taken all we can get from there; one of the foremen of our cannery was Father Duncan's foreman in the Metlakahtla cannery, and ever since that cannery has not been operated he has been with us as foreman.

Q. How long since the Metlakahtla cannery has been operated? A. I think it is three years.

Q. Has it been operated since the Government deposed Father Duncan from there? A. It has not.

Q. If you should be prohibited from operating your Cedar Point fish-trap, Mr. Burckhardt, what effect will that have upon the employment of natives as applied to the natives of Annette Island?

A. We will not need as much help.

Q. You would not need as much help?

A. No; we probably would not need any Metlakahtlans at all this year, or very few of them, if we cannot get the fish.

Q. They would be deprived to that extent of employment?

A. As far as the cannery help is concerned. [75]

Q. You know, as a matter of fact, there is no cannery on Annette Island that could furnish them employment?

A. There is not, and there is no building there that could be used for a cannery.

(Testimony of Charles A. Burckhardt.)

Mr. HELLENTHAL.—I have a map here, your Honor, of that locality with Annette Island on it, Clarence Straits, Portland Canal, etc., and I want to offer that in evidence.

(Whereupon said map was received in evidence and marked Defendant's Exhibit No. 1.)

Q. What quantity of fish—about how many fish did you get from the waters surrounding Annette Island, within the President's proclamation, last year for the Chomley cannery?

A. About 300,000.

Q. In what trap were they caught?

A. In the trap known as the Brendible trap.

Q. Who owned that trap?

A. The Alaska Pacific Fisheries and Brendible.

Q. You were partners in the trap? A. Yes.

Q. And this trap you have now driven was driven to take the place of that one?

A. No, this trap is far below that one; that trap was up on the upper end of Annette Island.

Q. You need that trap besides?

A. Yes, sir.

Q. Can you get fish out of that trap?

A. We were stopped from driving that trap.

Q. You stopped operations as soon as the injunction was issued?

A. We didn't cease operations—as soon as the injunction was placed on us we couldn't go ahead.

Q. If no proceedings had been commenced against you, you would have proceeded to operate

(Testimony of Charles A. Burckhardt.)

that trap, also? A. Yes, sir. [76]

Q. That is the trap you got some fish from last year—300,000? A. Yes, sir.

Q. And also the previous year, Mr. Burckhardt?

A. No; last year only.

Q. Now, I call your attention to Defendant's Exhibit No. 1, and I wish you would mark on that exhibit with the letter "A" the point at which the Cedar Point trap is located—the trap in dispute in this case.

(Witness so marks map.)

Q. You are familiar with those waters, Mr. Burckhardt, I believe you have testified?

A. Yes.

Q. Now, how is that trap constructed with reference to its being an obstruction to the navigable capacity of the channel or an obstruction to navigation?

Mr. REAGAN.—I object to that as immaterial, if the Court please. The law says it shall not be built at all, without permission, no matter whether it is an obstruction or not; and it does not have to be an obstruction in order to come within the language and construction of the law.

The COURT.—That is immaterial, but I am disposed to let him testify on that if you lay the foundation for it, Mr. Hellenthal. I do not know now whether this witness knows anything about what is an obstruction to navigation and what is not.

Q. How was the trap constructed with reference

(Testimony of Charles A. Burckhardt.)

to its effect upon the navigable capacity of the channel?

A. The trap is right in front of a reef—a reef runs out there, and we maintain a bell and a light on the trap at all times; the bell is rung in foggy weather and the light is right there at night, and it is not an obstruction to navigation—there are no steamers pass there, anyway.

Q. Could it protect steamers from going on that reef?

A. In fact it acts more like a light-house for them than an obstruction; [77] it is an aid to navigation; I consider a fish-trap with lights is an aid to navigation; I have traveled around Alaska in boats and know that they are aids to navigation.

Q. You have traveled on ships about here a great deal yourself?

A. Yes, sir; I have traveled all over southeastern Alaska in my own boats as far as Cross Sound.

Q. You operate your own boats?

A. Yes, sir.

Q. In connection with your canneries?

A. Yes, sir.

Q. And have spent a good deal of time on those boats?

A. Yes, sir; I am on the boats nearly all summer; spend very little time at home.

Q. How does that trap protect any ship from going on that reef?

A. There is no ship has any business going in there.

(Testimony of Charles A. Burckhardt.)

Q. Would they be apt to get into trouble if there was no trap there?

A. They would be more apt to get into trouble if that trap wasn't there, because when they saw that light they would know there was something there.

Q. If the light wasn't there they would be more apt to go on that reef?

A. Whenever a master of a vessel sees a light he will keep away from it.

Q. How wide is the channel at that point?

A. Well, it is pretty wide—about 12 miles.

Q. Across the channel. How wide is it in the vicinity of the trap—is the water very rocky?

A. Yes, it is rocky; you can see the rocks all along the shore in through here. (Referring to map.)

Q. Would it be dangerous for a ship to go in there? A. Yes, sir.

Q. And the trap has the effect of warning them of the existence [78] and locality of those rocks?

A. Yes, sir.

Q. I think you have already stated that you have a bell on the trap, operated in foggy weather, and the light at night? A. Yes, sir.

Q. That is maintained there all the time?

A. Yes, sir.

Q. Now, you have been engaged for many years, I believe you testified, in the fishing business—do you know what devices are usually employed in catching salmon in the Territory of Alaska?

A. Traps, seines and gill nets.

Q. To what extent in southeastern Alaska are

(Testimony of Charles A. Burekhardt.)

traps employed in supplying canneries with fish?

A. Well, that would be pretty hard for me to say, I would be guessing at it; I don't know.

Q. Give your best estimate as to what per cent of the fish in southeastern Alaska are caught in traps.

A. I would say close on to 75 per cent of the fish that are gathered in southeastern Alaska are caught in traps.

Q. And what do you say as to your trap that you have at Cedar Point being the usual and ordinary device employed in catching fish here?

A. Yes, sir; it is the usual ordinary device.

Q. It is the usual ordinary device?

A. Yes, sir.

Q. It is the trap generally employed?

A. Yes, sir; it is a regular trap that is used around in this district.

Q. The same kind of a trap as is used by other fishermen throughout this district? A. Yes, sir.

Q. It does not differ particularly from other traps? A. No. [79]

Q. What is the cost of the trap—cost of driving it?

A. That trap, the cost is in the neighborhood of \$4000.00.

Q. How long is the life of a trap?

A. Only one season; part of the web is good for two seasons, but practically the life of a trap is one year.

(Testimony of Charles A. Burckhardt.)

Q. Piles go out every year? A. Yes.

Q. If you are not permitted to fish the trap this season, the trap itself would be a total loss to you?

A. Yes, sir.

Q. There would be no trap there next year?

A. No.

Q. I hand you here, Mr. Burckhardt, a map, marked for identification Defendant's Exhibit No. 2, and ask you to look at that and state if you know what it is.

A. It is a map of the fish-trap location at Cedar Point.

Q. Made by an actual survey upon the ground?

A. Yes, made by Mr. Ryus.

Q. And that shows accurately the place at which it is located? A. Yes, sir.

Q. The straight line there shown as the location of the trap, comes even with the shore—the trap, however, as I understand your testimony, does not extend the whole length of that straight line?

A. No, sir; they take their marks to get the survey, and they had to have shore marks, and for that reason we had to show that line, and then go out to a spruce tree, and here is another one (indicating.)

Q. Now, will you take your pencil, Mr. Burckhardt, and mark on there approximately where the trap would be with reference to the shore?

A. I could do it only approximately, it is not to scale. Now, say, this is the lead, supposed to represent 1,500 feet, I would say that it was approximately there (indicating.) [80]

(Testimony of Charles A. Burckhardt.)

Q. Will you mark that with the letter "B"?

(Witness so marks map.)

Q. Mark the other side of the trap with the letter "C"—the seaward side of it.

(Witness does so.)

Q. The trap, then, is approximately between B and C on that line?

A. Yes, approximately; it is probably over the C—probably comes out farther than that, I would say, about here would be the end of it (indicating).

Q. How near the shore is the seaward side of the trap—approximately how many feet from shore is it? A. The end of the trap?

Q. How far to the seaward is the shoreward end of the trap from the line of ordinary high tide, approximately? A. About 600 feet.

Q. Now, how far to the seaward is the shoreward end of the trap from the line of extreme low tide, approximately? A. How far out?

Q. How far to the seaward?

A. From extreme low water?

Q. Yes.

A. Somewheres close on to 200 feet—you mean where the lead begins?

Q. Yes, the point that is nearest the shore.

A. How far the lead is from low-water mark?

Q. Yes.

A. I would say approximately 200 feet.

Q. There is no part of the trap, then, situated closer than 200 feet to the line of extreme low water along the shore of Annette Island? A. No.

(Testimony of Charles A. Burckhardt.)

Q. And no part of the trap is situated nearer than 600 feet from [81] ordinary high tide?

A. No.

Q. Is any part of the trap built on tide-land or flats?

A. No; the trap is all outside of the low-water mark.

Q. In deep water? A. Yes, sir.

Q. In deep water and not on the tide-land?

A. Yes, sir.

The COURT.—The lead and all?

A. Yes; there is none of the lead on high-water mark; it is all below low-water mark.

Q. Is any part of the trap attached to the island at all? A. No.

Q. Do you make any use of the shore or tide-lands? A. No.

Q. None whatever? A. No.

Q. You remain entirely in deep water?

A. Yes, sir.

Q. Your watchman, how does he stay there?

A. He stays there in a house-boat on a scow; he has strict orders to remain off the Island—to take nothing from the Island.

Q. Is there any intention on your part to enter that Island or go upon that Island? A. No, sir.

Q. Or extend a lead from shore, or go anywhere near the Island? A. No, sir; we don't.

Q. Any nearer than 200 feet below low-water mark? A. No, sir; we don't.

(Testimony of Charles A. Burckhardt.)

Q. Would the operation of your fish-trap in any way effect the Island itself? A. No, sir.

Q. Would it obstruct access from the deep water?
[82] A. No.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. REAGAN.)

Q. The name of your Superintendent is what, Mr. Burckhardt? A. T. A. Heckman.

Q. How long has he been superintendent?

A. He has been in my employ as superintendent since 1908.

Q. That would be 8 years? A. Yes, sir.

Q. He is familiar with conditions around there, is he? A. Yes, sir.

Q. Did he tell you he had been employed by Brendible to make a survey of the trap site?

A. No, sir.

Q. You didn't know that? A. No, sir.

Q. Did you ever hear of it? A. No, sir.

Q. Not at all; and you say he had charge of the operations for the survey of this trap site?

A. Yes, he had charge of them; I was there with him.

Q. Who suggested this site, you or he?

A. I did.

Q. How did you know about it?

A. I had been around there and I had seen it and saw that it was a likely place.

(Testimony of Charles A. Bureckhardt.)

Q. Do you know whether he made a survey for Mr. Brendible?

A. Not at that point—he did at the upper end. We had a diver in the spring come up and sound this location that the Brendible trap was in—that was near Walden Rocks—I wasn't present at the time.

Q. Then you don't know where it was, do you?
[83] A. I do know, yes.

Q. How do you know if you were not there?

A. Because they told me where it was, and the trap was put there.

Q. So if Mr. Heckman did discover this trap by reason of having been employed by Brendible to survey it, you don't know anything about it?

A. I know nothing about it, no; I never heard anything about it before.

Q. When was that cannery built at Chomley?

A. In 1911.

Q. When was the cannery built at Yes Bay?

A. It is one of the oldest canneries in Alaska—I think in 1908.

Q. Now, you say you have only been getting fish out of the waters within 3,000 feet of Annette Island last year? A. Yes.

Q. How did you get those fish?

A. Got those out of the Brendible trap.

Q. What was the process under which that trap was put up—I mean the legal process, if there was any?

A. We furnished the material and the webbing;

(Testimony of Charles A. Burckhardt.)

Mr. Brendible got out the piling in the winter-time; we paid him for the piling, and he did all of the work; we employed him and his son as watchmen on the trap, and paid them for their services; we took the fish and credited the fish to the trap at the prevailing prices we were paying others, and the profits were to be divided; but there was a loss in the trap last year and there was no profits, but he was paid for his services as watchman the same as we paid the other one, and he also was paid for his trap piling which he got out in the winter-time.

Q. Now, in order to operate that trap it was necessary to get a permit from the Annette Council, wasn't it? A. I don't know. [84]

Q. You never had anything to do with that?

A. No.

Q. Why didn't you drive the trap instead of paying Brendible to do it?

A. It was Brendible's location, and he wanted to know if we would drive it and furnish the material, on that kind of an arrangement, which we did.

Q. Isn't it a fact to your knowledge that the only way traps were driven on that Island at all until this year, until you drove yours, was this way, that a native of Metlakahtla Island gets a permit from the Secretary of the Interior or from the Annette or Metlakahtla council for the construction of a trap?

A. If they want to drive right at the shore.

Q. And they have always gotten those permits?

A. I never had anything to do with that part of it.

Q. And nobody but a native is allowed to build

(Testimony of Charles A. Burckhardt.)

a trap there, or to get a permit for a trap?

A. I don't know anything about that; the only thing I know is that Brendible came to Mr. Heckman, and Mr. Heckman came to me, with this proposition as I outlined it here, and said Brendible had found this location and was anxious that somebody should help him put the trap in, and wanted to know if the proposition was agreeable to me.

Q. Why didn't you drive the trap on your own account and leave Brendible out of it?

A. We don't do business that way.

Q. Cannery men don't do that?

A. I don't think so; I never heard of cannery men being any bigger robbers than anybody else.

Q. You haven't heard of any litigation either here or at Ketchikan about the jumping of traps?

A. We haven't had any. [85]

Q. Now, Brendible didn't have a stick driven in that ground, did he?

A. That doesn't make any difference. Mr. Brendible came to our man, Heckman, and told him he had this location and asked him if he would get the money or furnish the material to put in a trap, and we said we would, which we did. What do you want us to do—find out what he had and then go and steal it from him?

Q. I am not answering your questions, you answer mine. If Brendible also discovered this point at Cedar Point and got Mr. Heckman as surveyor to survey the trap—

(Testimony of Charles A. Burckhardt.)

A. I told you Mr. Brendible did not discover that site, that I discovered that site, and this trap was driven at my instigation—I told Heckman I wanted him to drive that trap.

Q. Is Mr. Heckman present?

A. No, he isn't here, we couldn't all be up here—I am sorry he is not here.

Q. You made an arrangement with Brendible—first Brendible looked at a place he thought would be a good site for a trap and because of that discovery you made an arrangement with him that you would pay him for the piles that he himself took out, that you would pay for the trap, that you would pay him a salary, and also his son, and that you would divide the profits from the trap? A. Yes, sir.

Q. And you did that without any permit being granted by the Annette council?

A. I don't know anything about that.

Q. You didn't know that the Annette Council grants permits for the building of fish-traps?

A. No.

Q. You didn't know that the Secretary of the Interior grants permits? [86]

A. No.

Q. How many years have you been in the fishing business? A. About ten years.

Q. And you never went on Annette Island in all that time?

A. I never have been on the Island—I have passed it in my boat.

Q. You never were on the Island while Father

(Testimony of Charles A. Burckhardt.)

Duncan was operating that cannery there?

A. I never went on the Island while Father Duncan was operating that cannery.

Q. Why not?

A. Because he did nothing but seine fishing—the fishing business has changed—we are driving farther to the sea; the Yes Bay and Chomley canneries are located in bays, and the other canneries have gone out below us and put in traps and catch the fish before they strike our traps and we have hard work to get fish, and that is why we got down in this District.

Q. In other words, the waters are fished out and you have to get farther away?

A. They are catching the fish before they get up to the streams; in the old days there were no traps in that district; the fish were all caught by the natives with seines, but now the fish are getting scarcer—other canneries have come in and driven traps below us and there are not as many fish come up to the bays as used to come.

Q. The result of all that you have said is that the waters have become depleted of fish and that you have to go farther away to catch them?

A. Yes, the waters become depleted out at the other end.

Q. What end do you mean?

A. Up at the end where the fish used to be caught in seines.

Q. How long have you been using traps to catch fish? A. Since 1907. [87]

(Testimony of Charles A. Burckhardt.)

Q. Now, since you began using traps in 1907, you used them first in the vicinity of your cannery at Yes Bay? A. Yes.

Q. And now you have to go farther away from Yes Bay? A. Yes.

Q. Why is that?

A. Because others have put in traps below us.

Q. And your traps won't catch any more fish?

A. There is not enough fish caught,—

Q. In other words, there is not enough fish, and as you said a few minutes ago, you have to go farther out to sea? A. Yes.

Q. And that is the fish history of this country, isn't it?

A. I think it is; the fish are in primer condition the nearer you get to the sea—they are better fish.

Q. If you will please pay attention to what I say and just answer my questions we will get along better—I just want facts.

A. I am giving you facts as near as I know them.

Q. If that is true, the operation of fish-traps around Annette Island will soon get to a point where you will have to move farther from Annette Island?

A. You cannot move farther from Annette Island.

Q. Why not?

A. Because there is nothing below you, unless you go to Duke Island.

Q. You cannot go any farther? A. No.

Q. That is the last place you can go to?

A. About as far as you can go.

(Testimony of Charles A. Burekhardt.)

Q. If you fish it out the natives won't have anything left, will they?

A. Do you think I am going to fish it out?

Q. You answer my questions—I am not here to answer yours. [88] You say this is the last place you can go, therefore if you fish it out the natives won't have any fish left, will they?

A. What is the difference whether I am catching the fish over here or over here? (Indicating).

Q. I wish you would answer my question.

A. I cannot answer that question. Ask me the question once more and I will see what it is.

Q. I say if you continue to fish there in those waters, and the same rule applies as to the fish getting farther away so that you have to go farther out to sea, there will soon be a time when you will have to go away from Annette Island—

A. You cannot go any farther.

Q. If you cannot go any farther that will end the fish business, won't it?

A. The fish are always going to come in; the fish come along the shores of Annette Island—that is their traveling ground,—they come along there and the tide sets them in close to the shore.

Q. The same rule, as I understand you, then will not apply to the fish swimming in the waters of Annette Island, that applies around Yes Bay, where you first started your traps, would it?

A. I don't think it will.

Q. Why not?

(Testimony of Charles A. Burckhardt.)

A. Because there is no chance to get below with many traps.

Q. That is a guess, isn't it?

A. No, it is not any guess.

Q. You haven't tried it out, have you?

A. We have had divers down below, yes, sir.

Q. That is contrary to all the other fish habits that you have learned, isn't it?

A. There are fish there—there are fish way below there—there are fish that come around Cape Shakon, but you cannot hold a trap there because the weather is too rough. [89]

Q. How much money did you expend on your cannery at Chomley last winter?

A. Last fall and last winter?

Q. Yes, I will add the fall too.

A. Well, it is pretty hard for me to tell you that offhand; I haven't my records with me.

Q. You have never operated a trap at Cedar Point before, have you? A. No.

Q. How do you know how many fish you are going to get in that trap?

A. According to my knowledge of the business; we prepare our packs at our canneries for the amount of gear we put out; we might make a mistake, but then everybody makes mistakes sometimes.

Q. You may make a mistake by a great many thousands of fish, might you not?

A. Yes, that is true; but we figure on so many cases, and we have found out that it requires so much

(Testimony of Charles A. Burckhardt.)

gear for that amount of profit.

Q. And if you don't come up to your expectations you suffer a loss? A. Yes, we do.

Q. That is the ordinary loss of business, isn't it?

A. We don't very often fall down.

Q. Sometimes you build traps that don't come up to your expectations, don't you?

A. Yes, sir; certainly.

Q. And that is an ordinary loss of business, isn't it? A. Yes.

Q. And sometimes you build a trap and it is taken out by the tide or storm?

A. I have heard of that, yes, but I have never had one taken out. [90]

Q. You know that such things happen?

A. Yes.

Q. Therefore if you build a trap you are not entitled, according to the laws of business, to absolutely depend upon a profit from that trap, are you?

A. There is no storm that can take that trap out at Cedar Point.

Q. It would be an ordinary business loss, wouldn't it? A. If the trap didn't catch any fish?

Q. Yes. A. Certainly would.

Q. Or if it was taken out by a storm?

A. It would be together on account of the storm.

Q. And if you built it there without lawful authority, if that should happen to be the conclusion of the Court, so you could not do business there and could not fish that trap, that would also be an ordi-

(Testimony of Charles A. Burckhardt.)

nary business loss, wouldn't it?

A. I wouldn't consider it so.

Q. Now, how much enlargement did you say you made to your Chomley cannery?

A. About 25,000 cases.

Q. I am not asking about cases, I am asking about the absolute addition you made to the building.

A. We have increased our capacity at the cannery so we can handle 25,000 cases more than we did the year before.

Q. And that increased capacity is an asset your company has?

A. It is an addition in buildings, and an addition in machinery.

Q. How much addition of buildings did you put there?

A. I think the expenditure was something like \$3,500.00.

Q. What did you do—build an addition of some kind? A. Yes, sir.

Q. An extra room?

A. I think that is what it was.

Q. How much of a room was it?

A. I don't know. [91]

Q. And you spent in the actual addition of the plant—

A. \$3,500.00, about—that is, as far as that is concerned.

Q. How much additional machinery did you buy?

A. I would say, offhand, somewheres around \$15,000.

(Testimony of Charles A. Burekhardt.)

Q. What was that machinery?

A. Coolers, seamers and butchering machines.

Q. That is all good material, isn't it?

A. Yes, it is good material when you can use it.

Q. Suppose you didn't catch any fish at all in your traps, it would be good machinery just the same, wouldn't it? A. Wouldn't be much good.

Q. And you would have to dispose of it in the ordinary course of events the best way you could. When you bought that machinery you bought it with the expectation of having use for it? A. Yes, sir.

Q. And if you didn't catch any fish at this particular point you would try to use it at some other point, wouldn't you?

A. As I stated before, when we figured our improvements and our enlargements of our plant at Chomley and our supplies for this year, we took into consideration these new traps we were going to put in and the additional fish we would get from these traps.

Q. Now, you estimated to Mr. Hellenthal that you would take 800,000 fish out of this trap this season?

A. Yes, sir.

Q. Now, if that 800,000 were caught by the natives and sold to you—

A. I didn't say 800,000 out of that trap,—I said 800,000 out of the two traps.

Q. Well, if the natives caught those fish and sold them to you they would be better off than if they worked for you for wages, wouldn't they? [92]

(Testimony of Charles A. Burckhardt.)

A. They surely would, but they cannot catch the fish by seines; they are traveling fish, not in schools, and they cannot be caught in seines.

Q. They could be caught by other appliances, couldn't they?

A. There is nothing they can be caught in except by a trap; we have had seines down there and couldn't catch any fish with them.

Q. Did you know there was an arrangement made for the operation of that fishing industry at Annette Island, by which Mr. Harris was appointed by the Government for the purpose of operating that cannery?

A. I knew they contemplated making a lease.

Q. Did you know what the terms of that lease were? A. I did not.

Q. Didn't you know it was somewhat similar to the arrangement you had with Brendible last year?

A. I did not; I didn't know anything about the lease—I didn't know there was going to be a lease until this spring.

Q. And that lease was executed by the Government, and Mr. Harris was to operate that cannery—you would expect Mr. Harris would put in a trap himself, wouldn't you?

A. I don't know what he would do.

Q. You would expect him to do that, wouldn't you,—as a man who knows his business wouldn't you expect him to put in his own trap?

A. I don't know anything about what Mr. Harris would do.

(Testimony of Charles A. Burckhardt.)

Q. You know he is a cannery man, don't you?

A. I don't know that—I know he is in the fish business.

Q. Did you ever hear of a cannery at Hawk Inlet?

A. Yes, sir.

Q. Do you know who runs it? A. Yes.

Q. Who? A. Mr. Harris. [93]

Q. I thought you knew. Now, when you say that trap was completed on the 19th of April, what do you call a complete trap—just the driving of the piling, or do you call it a complete trap after the webbing is on, and the capping is on wherever you put caps, and it is in fishing condition?

A. I had a telegram from Mr. Heckman on the 19th of April that the trap at Cedar Point was completed.

Q. That is all you know about it?

A. I don't think he would telegraph me if it wasn't completed.

Q. If on the 21st day of May they were putting the webbing on the heart walls, and stringing some of the lead with webbing, then that trap was not finished on the 19th of April, was it?

A. They might have been out there patching the trap, or they might have been out there letting the web down—I don't know anything about that.

Q. But if two reputable witnesses testified that they were out there and saw them putting the web on the heart, and there is absolutely no reason to disbelieve them, then you would be mistaken as to

(Testimony of Charles A. Burckhardt.)

the trap being finished on the 19th of April, wouldn't you?

A. I don't know who these men are—whether they know a fish-trap when they see one.

Q. If they were there putting the webbing on the heart walls on the 21st of May, the trap wasn't finished on the 19th of April, was it?

A. If the web was not on the trap it was not completed, no.

Q. Now, you say you received information from the Secretary of the Interior in regard to this proclamation on the 4th of May?

A. From the Assistant Secretary.

Q. How did he come to notify you about it?

A. Because I was corresponding with him.

Q. How long had you been corresponding with him?

A. Some time about the middle of March, I think—I am not positive [94] of the dates.

Q. You were corresponding with him in regard to fishing in these waters, weren't you?

A. I was corresponding with him in regard to the Harris lease—I had heard of it and I wanted to get a copy of the lease—I wanted to see what was being done.

Q. You knew about the Harris lease, then, as early as last March?

A. I knew there was a contemplated lease, but I was advised by our representative at Washington that Secretary Redfield had interfered and that no

(Testimony of Charles A. Burckhardt.)

fishing rights would be given to anybody—that everybody would be treated alike in those waters; that there wouldn't be any special fishing privileges.

Q. You knew there was a question about the rights to fish in those waters as early as March, did you?

A. As I told you, I received word that there would be no special fishing privileges given anybody—it was to be left open—that the lease would not carry with it any special fishing privileges.

Q. Now, why did you figure that you would lose 50,000 cases of fish if you didn't operate this trap?

A. I don't know of any other place where I can put a trap—I don't know where to look for any down there.

Q. Supposing you didn't catch enough fish to make 50,000 cases, out of this trap?

A. Out of the two traps.

Q. Then, how much do you expect to lose if you don't operate this one?

A. I estimated 600,000 fish out of that trap, and 200,000 out of the Brendible trap.

Q. How many cases of fish would 600,000 fish make?

A. We figure about 16 fish to a case, right through, on an average.

Q. Now, at your own figures if you didn't catch any fish at all out of this trap, that wouldn't be more than 36,000 cases. [95]

A. And the construction of the trap is \$4,000.00.

Q. I don't care about that.

A. Well, we will lose that.

(Testimony of Charles A. Burckhardt.)

Q. I am not asking you how much you will lose, I am asking you how many cases of fish you would lose if you didn't operate that trap?

A. As I say, I figured 600,000 fish out of that one trap, and 200,000 out of the other trap.

Q. That was an error in your estimate when you told Mr. Hellenthal that you estimated 800,000 fish out of this one trap?

A. Unless I misunderstood Mr. Hellenthal's question—I had no intention to deceive anybody.

Q. Now, how many Chinese do you employ at your Chomley cannery?

A. Well, I would rather answer that as Chinese and Oriental help—we have Chinese and Japs and it is pretty hard for me to figure them separately.

Q. And I suppose some Hawaiians and *Philippinos*?

A. We have sent 55 up there the first part of the season, and 25 more will go about the 1st of July.

Q. And the full crew of the Orientals will be about how many? A. Generally from 70 to 75.

Q. How many men do you employ besides Orientals? A. About 60 or 70.

Q. More? A. Yes.

Q. What do you pay the Chinese and Japs—Orientals? A. 35 cents a case.

Q. How many cases do they put up a day?

A. We figure on putting up from 3,000 to 3,500 cases altogether.

Q. Do you have supply houses from which you furnish your men with goods, etc.? A. Yes.

(Testimony of Charles A. Burckhardt.)

Q. How much average wages does a Chinamen get at the end of the [96] season, for the last 10 years—I mean cash, I don't mean what he has spent in the store with your company?

A. They don't buy much—the Chinese don't buy much in the store. The Chinese contractors, as a rule, make those contracts; I would say a Chinese boy, when he gets out of the cannery there, would have all the way from—the Japs from \$200 to \$300, and the Chinese from \$300 to \$400; the Chinese foremen, we pay them \$100.00 a month and a royalty.

Q. How much do the natives get?

A. The natives are paid by the hour.

Q. How much an hour?

A. The children—little boys and girls who work in the can loft, get 15 cents an hour; then they do other work, such as piling the cans in the coolers, and they get all the way from 25 to 40 cents an hour for that; and then along the line they get 25 cents an hour, 25 to 30 cents in the fish room, and some of them 35 cents an hour, and the Indians who pitch the fish up, they are paid by the thousand—they get 50 cents a thousand. We have two Metlakahtla boys who have been doing that for us for years.

Q. What proportion of native employees are children, girls and kids?

The COURT.—What is the object of all this?

Mr. REAGAN.—I want to get at his damages that he is claiming—I want to find out all about it—he makes the statement that he would lose his labor and I want—

(Testimony of Charles A. Burckhardt.)

The WITNESS.—I haven't included any native help in those items at all.

Q. You included your help—your labor, you said?

A. That is our contract labor and our white help.

Q. You didn't include this in that estimate then?

A. No, that is not in there at all.

Q. Now, what is your net profit on a case? [97]

A. From 50 to 75 cents a case.

Q. I understood you to say you paid out \$500,000 this last winter for your canneries?

A. \$500,000 we have paid out up to the present date.

Q. For how long a period?

A. For this season's operations.

Q. How has that been expended, and for what purpose?

A. For supplies, and materials for making up our pack for this year, advances on labor contracts—we make large advances on our Oriental help.

Q. You will run your canneries just the same if this trap is shut up, won't you?

A. We will run it as far as we can.

Q. You will use every one of these supplies you possibly can?

A. I want to use them all—that is what I bought them for.

Q. Ever run short? A. Of what?

Q. Of supplies? A. No.

Q. Haven't yet at any time since you have been in the cannery business?

(Testimony of Charles A. Burckhardt.)

A. I don't understand what you mean.

Q. Have you at any time, since you have been in the cannery business, run short of supplies so you have had to replenish your supplies—had to buy more before the season closed?

A. Sure, we have these things coming to us all the time, but you understand what I mean—for instance, in the canning business we buy our tin plate, our solder, our labor and all things going to make up the pack itself, is bought in the fall of the year—the box lumber, the nails, and all that material is bought early in the fall of every year, and the contracts with the men who engage the Chinese labor are made early in the fall, and we make advances on these labor [98] contracts, and those are the items I mean.

Q. Did you ever throw out any considerable quantity of these supplies—your boxes, or tin, or solder, or labor, or nails—did you ever throw any of them away, to any considerable extent?

A. We have thrown some cans away; when we haven't made our pack we had cans that became rusty.

Q. To what extent did you throw away cans?

A. We figure on all cans held over in the canneries that there is a depreciation of about 25 cents a case.

Q. But you use the supplies just the same, don't you?

A. If you were to sell them you wouldn't get that much for them; being rusty, they cannot be used for packing food products.

(Testimony of Charles A. Burckhardt.)

Q. Now, the shore around about Cedar Point there is rocky, isn't it? A. Yes, sir.

Q. It has reefs in it that run considerably out in the water, hasn't it? A. Yes, sir.

Q. It is not what you might call exactly a tide flat at all—there is no such thing as a tide flat there, is there? A. Yes, sir; there is a big tide flat.

Q. Whereabouts?

A. Right there at Cedar Point, runs out very shallow a long ways; most of the shores in that Annette Island district are very steep—there are 40 or 50 fathoms of water, and that is the reason these trap locations are so sought after.

Q. What is the deepest water you can drive a trap in?

A. It all depends on how long you get your piles.

Q. I want to know from your experience what is the deepest water you can drive a trap in?

A. We have never driven a trap in over 60 feet of water.

Q. It runs from 60 to 70 feet, doesn't it?

A. About 60 feet is as high as we have ever gone.

[99]

Q. And the lead extends up to shallow water, far enough so that you can get the fish that are coming along the shore? A. Yes, sir.

Q. And at this place it happened to be rocky and you began out below there, didn't you?

A. We didn't begin out below the rocky part.

Q. Now, there is the reef at Cedar Point—it is all

(Testimony of Charles A. Burckhardt.)

rock in here and way down to there (indicating), isn't it?

A. There are rocks scattered all through there; it is not rocky along in here, it is all sand. (Indicating.)

Q. The reason for going down there is because of this reef here, wasn't it? A. No.

Q. You know what that is, don't you? You know that represents that reef that runs out there, don't you? A. That reef doesn't show.

Q. It shows at low water, doesn't it?

A. At extreme low water it shows.

Q. About 175 yards from this point here. (Indicating.)

A. No, the trap starts about here—this is about where the trap comes out—you see he has drawn his line over here too far—the trap comes out here, more like this—it doesn't start there. (Indicating.)

Q. You haven't driven any piles here? (Indicating.) A. No.

Q. The first pile is down here? (Indicating.)

A. Below low-water mark.

Q. That is on account of the condition of affairs—you couldn't use it up here? (Indicating.)

A. That is because we had no right to go up there.

Q. What right did you have to go over there? (Indicating.) A. That is navigable water.

Q. Then, this is all built in the navigable water?

A. Yes, sir. [100]

Q. Did you get any permit from the Secretary of War? A. No.

(Testimony of Charles A. Burekhardt.)

Q. Did you submit any plans to the chief of engineers?

Mr. HELLENTHAL.—Oh, I object to that as immaterial; he said he didn't have any permit.

The COURT.—It is alleged in the complaint and is not denied in the answer.

Q. Right down here it was so rocky you had to suspend the web from this point to that point, didn't you? (Indicating.)

A. We couldn't drive there so we put a wire across to stretch the web down.

Q. From here to here it is good driving, isn't it? (Indicating.)

A. I don't know exactly—it is below low water approximately 65 feet.

Q. Now, you say there is no shipping there at that point? A. No.

Q. Well, then, there is no navigation to be aided, is there?

A. If any one were to go over there it would certainly be a beacon to them to keep away from that reef.

Q. Now, if you don't employ these Metlakahtla natives at your cannery, they will probably seek work some place else, won't they?

A. I suppose they will if they can get work.

Q. There has been no great distress among the Metlakahtlans on account of their not being employed at your cannery, has there?

A. Well, the majority of them are over there now, at Chomley.

(Testimony of Charles A. Burckhardt.)

Q. The Metlakahtlans are doing other work in that part of the country, aren't they—they are running gas boats?

A. Yes, we have bought several gas boats for them, too—six or seven.

Q. They are working at Ketchikan, working in the sawmill there, aren't they? [101]

A. There are very few of them on Annette Island now.

Q. They go wherever they can get work, don't they?

A. Yes, a great many of them go to —— Island.

Q. And if there were industries on the Island that were not interfered with, they would stay on the Island, wouldn't they?

A. I don't know; they don't want to stay on the Island in the summer-time, they want to go off, go away camping—it is more fun for them.

Q. Now, what do you maintain this bell and light for on your trap—is it for the purpose of keeping people from running into the trap?

A. We are compelled by the Department to keep a light on there, and a bell.

Q. Is it for the purpose of protecting the trap?

A. Well, I guess it is for the purpose of protecting the trap and navigation—I don't think it is so much protection to the trap that it is put there as it is protection to navigation.

Q. Is there any regulation of any department of the Government requiring you to put a bell on your trap? A. Yes.

(Testimony of Charles A. Burckhardt.)

Q. Where do you get that?

A. The Department of War.

Q. Will you tell me where I can find a reference to it?

A. No; we have always had a bell and a light on them.

Q. These traps only last one season, you say, and they will have to be redriven next year?

A. Yes, sir.

Q. So when you put this trap in you only expected to run it this season? A. Yes, sir.

Q. And you expected to put in another trap up there next year? A. Yes.

Q. And as many traps around Annette Island as you could get [102] away with?

A. We had no intention of driving another trap there.

Q. You have two traps there?

A. We had two traps there, the Brendible trap and this trap.

Q. The Brendible trap is there now in the name of Brendible, isn't it?

A. Brendible and the Alaska Pacific Fisheries.

Q. The permit is in the name of the Brendible trap, isn't it?

A. We asked for the permit in our own name.

Q. Who did you get the permit from?

A. From the Secretary of the Territory.

Q. That is the only permit you have had?

A. Yes, sir.

Q. Isn't that the ordinary revenue measure on the

(Testimony of Charles A. Burckhardt.)

fish business that the Legislature passed here?

A. I guess it is.

Q. That is all the permission you ever got to construct that trap there? A. All I know about.

Q. Don't you know that Brendible got a permit from the Annette council to build that trap?

A. No.

Q. You never heard anything to the contrary, did you? A. No.

Q. You never heard that mentioned?

A. I stated before that I hadn't; if Brendible had any other permit I know nothing of it.

Q. Now, that cove in there just south of Cedar Point, Cedar Point being situated at its northerly extreme, is called Smugglers Cove, isn't it?

A. Yes.

Q. Now, from headland to headland of that cove, isn't your trap entirely within the cove?

A. No, sir. [103]

Q. Now, that is Cedar Point there, isn't it—that looks about like it to you, don't it? (Indicating.)

A. I don't know anything about whether this map is drawn to scale—it is a Government map—that is all right, that is Annette Island.

Q. It is published at Washington, D. C., by the Coast and Geodetic Survey.

A. That is all right.

Q. Now, from that headland here to that headland here (indicating), isn't that trap entirely within that cove?

A. No, the trap is not in there at all; the survey

(Testimony of Charles A. Burckhardt.)

will show where the trap comes.

Q. Well, I had it surveyed by Mr. Walker about three days ago and that is his survey—would you say that line is 3000 feet from the shore?

A. I don't know—what is the scale there?

Q. I want your opinion on it, as to whether the map is correct or not.

A. The map is absolutely correct as far as that is concerned, but I don't know anything about this (indicating); you can see the rocks around there that I have testified to—it might be 3000 feet—I can tell you exactly if you will give me a rule, I will mark out 3000 feet for you—I don't know whether that is 3000 feet or what it is.

Q. Your trap is within 3000 feet of the shore, isn't it? A. Yes.

Mr. REAGAN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Mr. HELLENTHAL.—This map that has been identified as exhibit No. 2, I will offer it in evidence.

The COURT.—It will be received. [104]

(Whereupon said map was received in evidence and marked Defendant's Exhibit No. 2.)

Q. Now, Mr. Burckhardt, can you supply the Chomley cannery with fish from other sources if you are deprived of the privilege of operating the trap at Cedar Point? A. I could not.

Q. They couldn't be procured from other places this season? A. They could not.

(Testimony of Charles A. Burekhardt.)

Q. No way to buy them?

A. Everybody is working to full capacity, every possible location has been taken, the fishermen are all contracted with for their packs, and I couldn't get the gear to put in a trap this season.

Q. Other trap locations in that vicinity have all been taken? A. Yes, sir.

Q. There are none to be had?

A. None to my knowledge. I took that up with Mr. Heckman on my way north, and I asked him if there was any place he could get to drive a trap that would be worth having; and there are none left.

Q. Now, in reference to the location of that trap in regard to the navigable channel of those waters lying along the westerly side of Annette Island—is that trap in a channel that is followed by ships?

A. No, sir; it is not.

Q. Could ships follow along a channel in the vicinity of where the trap is? A. They could not.

Q. It is clear out of the line that any of the larger ships could possibly follow?

A. No ship could possibly travel in there.

Q. That channel lies to the seaward of the trap?

A. Yes, sir.

Mr. HELLENTHAL.—That's all. [105]

Q. (By Mr. REAGAN.) How large a boat could travel in those waters?

A. Oh, a fish boat—a cannery tender—I wouldn't say anything more than that.

(Questions by Mr. HELLENTHAL.)

Q. The fish travel past Smugglers Cove before

(Testimony of Charles A. Burekhardt.)

they reach your trap? A. Yes, sir.

Q. They come from the sea? A. Yes, sir.

Q. Mr. Reagan has been asking you about fish becoming depleted, and you have testified that you have had to go from time to time farther out to seaward to catch your fish? A. Yes, sir.

Q. Because others went ahead of you, is that the reason? A. Yes, sir.

Q. Is that due to the general depletion of the fish supply in the waters of Alaska?

A. It is not; it is simply because they are moving further toward the sea to get their fish.

Q. And one of the reasons is that the fish are better at that point?

A. The fish are better, and since the canneries have adopted the new canning system, the sanitary can, you have to have fresh fish. The old way, if the fish were a little stale you punctured the cans and heated them up to a point where they expelled those gases, but under the new system where the top is crimped on to the can you have to have fresh fish, and that is one reason that desirable trap sites are so much more in demand.

Q. The best way to catch fish is by traps?

A. The most sanitary way is by traps.

Q. And the further seaward you get the better fish you get? [106] A. Yes.

Mr. HELLENTHAL.—That is all.

Recross-examination.

(By Mr. REAGAN.)

Q. And the traps farther in from the sea have

(Testimony of Charles A. Burckhardt.)

been abandoned, haven't they?

A. Some of them have been abandoned.

Q. And that is because they did not fish any more?

A. That is because they didn't get enough fish to pay to put them in—the fish are caught before they get up there.

Mr. REAGAN.—That is all.

WITNESS EXCUSED.

(Whereupon court adjourned until 10 A. M. tomorrow.) [107]

MORNING SESSION.

June 16, 1916, 10 A. M.

CHARLES A. BURCKHARDT, upon being recalled as a witness on behalf of the defendants, having been previously duly sworn, testified as follows:

Direct Examination.

(By Judge HANFORD.)

Q. Mr. Burckhardt, state what was the position of Thomas A. Heckman at the Chomley cannery in the year 1914-15? A. Superintendent.

Q. He was superintendent? A. Yes.

Q. Referring to the arrangement with Brendible for the operation of a fish-trap there on the shore of Annette Island, did the Alaska Pacific Fisheries have any contract in writing with relation to the construction or operation of that trap?

A. Not to my knowledge.

Q. No contract in writing? A. No.

Q. By whom was the contract made under which that trap was constructed and operated?

(Testimony of Charles A. Burekhardt.)

A. By Mr. Brendible and Mr. Heckman.

Q. Did you personally as President or Manager of the Alaska Pacific Fisheries participate at all in the negotiations or consummation of the agreement with Brendible or with the Metlakahla Indians with relation to that trap?

A. No; the only part I took in that matter was that I approved of the plan that was submitted to me by Mr. Heckman.

Q. You gave your approval to it as it was submitted to you by Mr. Heckman? A. Yes.

Q. Now, as submitted to you did that agreement involve the payment of any fee for a license or permission to operate that trap? [108]

A. Not that I heard of.

Q. Is it possible that there could have been a payment made by Heckman for a license to operate that trap without your knowledge?

A. That is possible.

Q. If any such payment was made you have no knowledge of it?

A. No, I don't know anything of it.

Judge HANFORD.—That is all.

Cross-examination.

(By Mr. REAGAN.)

Q. Mr. Heckman then had some authority in the matter?

A. Oh, yes; Mr. Heckman was superintendent of the cannery under my supervision.

Q. You say you have three canneries, one at Chomley, one at Yes Bay and one at some place else?

(Testimony of Charles A. Burckhardt.)

A. One at Chilkoot.

Q. What is the output of the Chilkoot cannery?

A. 60,000 cases.

Mr. REAGAN.—That's all.

WITNESS EXCUSED. [109]

Testimony of F. O. Burckhardt, for Defendants.

The defendants, to further maintain the issues on their part, introduced as a witness F. O. BURCKHARDT, who, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is F. O. Burckhardt?

A. Yes, sir.

Q. Do you know the Pacific Alaska Fisheries?

A. Yes, sir.

Q. What is your connection with the Pacific Alaska Fisheries?

A. I am Vice-President of the Company and Superintendent of Chilkoot.

Q. Are you acquainted, in a general way, with the properties of the company? A. Yes, sir.

Q. You are acquainted with the Company's cannery at Yes Bay? A. Yes, sir.

Q. And the Company's cannery at Chomley?

A. Yes, sir, I am.

Q. You are familiar with the business of the company? A. Yes, sir.

Q. With its plans? A. Yes, sir.

(Testimony of F. O. Burckhardt.)

Q. With the work it has been doing in the past few years? A. Yes, sir.

Q. And the things it intends to do?

A. Yes, sir.

Q. Do you know where the Cedar Point trap is located? A. I do.

Q. Do you know when that was located?

A. Cedar Point trap was located during the month of August, 1915.

Q. By locating, Mr. Burckhardt, what do you mean? Explain that [110] to the Court.

A. I mean that during the month of August, 1915, the location was sounded and a diver was sent down to see whether it was possible to drive piles in that location, and it was found possible to drive a trap, so plans were made at that time to put in that trap for the season of 1916.

Q. It was too late to put it in for the year 1915?

A. Practically at the end of the 1915 season.

Q. So that the earliest time the trap could be put in was the next year?

A. As I remember, it was the 20th to the 25th of August, as near as I can recall at this time.

Q. Now, what was done pursuant to that by the company?

A. As far as this particular trap is concerned, or all of our operations?

Q. As far as your operations are concerned so far as they relate to the work done in connection with this trap.

(Testimony of F. O. Burckhardt.)

A. We made our estimate of the number of fish that would probably be caught in this trap in an ordinary season, and made our arrangements accordingly for an increased pack to that extent, bought all the materials in connection therewith and hired all the additional help that was necessary.

Q. Where was this increased pack to be put up?

A. The increased pack was to be put up principally at Chomley.

Q. At the Chomley cannery, and the arrangements you speak of in reference to the employment of additional help and the procuring of additional supplies and the enlargement of the cannery,—the cannery at Chomley was enlarged to some extent, was it not? A. Yes, sir.

Q. The enlargement at Chomley was made by reason of the location of the trap at Cedar Point?

A. Yes, sir. [111]

Q. Do you know what was done in the way of constructing that trap afterwards, or is that a matter of hearsay?

A. It is a matter of hearsay; I was present when orders were given and communications were received, but I did not give any orders personally, and I wasn't there personally at any time when the trap was being driven.

Q. Do you know whether the driving of that trap was in contemplation by the Company at all times between the 25th of August and the time it was completed? A. It was.

(Testimony of F. O. Burckhardt.)

Q. What do you know about that, Mr. Burckhardt?

A. I know we figured on driving that trap after we found it was possible to drive a trap at that location, and all our arrangements were made as soon as we got back to Seattle for the driving of the trap, and we bought all our supplies that would be necessary to take care of the increased amount of fish we would get from that trap, which we would operate, in addition to what we had operated in the year of 1915.

Q. Did you have any knowledge in the month of August, 1915, that there was any contemplated movement on the part of the Government to do anything with the waters surrounding Annette Island—anything unusual? A. No, sir.

Q. Leasing it or reserving it, or anything like that? A. No, sir.

Q. When did you first have any knowledge looking towards the leasing of Annette Island?

A. I think the first knowledge that I had was when I returned to Seattle, late in April, 1916.

Q. Those were the dealings in relation to the leasing of the cannery? A. Yes, sir.

Q. When did you get your first knowledge of the fact that the [112] President intended to or did create a reserve around Annette Island?

A. I think it was somewhere about May 4th.

Q. Prior to May 4th, or thereabout, did you have any knowledge whatsoever that the President ever intended to prevent anyone from fishing the waters

(Testimony of F. O. Burckhardt.)

in which the Cedar Point trap is located?

A. No, sir.

Q. Or that the Department or anyone else intended to take any steps to prevent you from fishing that trap? A. No, sir.

Q. You have been in the fishing business for sometime, Mr. Burckhardt?

A. I have been in the fishing business for seven years.

Q. Do you know how canneries are constructed?

A. Yes, sir.

Q. The length of time required in constructing a cannery? A. Yes, sir.

Q. You know when the fishing season commences and when it closes in the Territory?

A. Yes, sir.

Q. About when does it commence and when does it close? A. The big run?

Q. When does the fishing season first commence?

A. The fishing season in the Ketchikan district starts approximately on the 1st of July.

Q. How long does it continue?

A. It runs until the middle of September.

Q. Now, from what you know as a cannery man and fisherman, can a cannery be constructed on Annette Island,—or could a cannery be constructed anywhere in southeastern Alaska, construction to commence after this date and be completed in time to put up this year's run of fish? [113]

A. Under ordinary conditions it could not, and it

(Testimony of F. O. Burckhardt.)

would be more than impossible now under the extraordinary conditions that prevail this year—in fact it would be absolutely impossible to obtain most of the supplies needed for the operation of a cannery.

Q. Could a cannery be built at all this year and operated this year? A. No, sir.

Q. You are familiar with the trap site at Cedar Point? A. Yes, sir.

Q. Do you know about how many fish that trap ought to catch? A. Yes, sir.

Q. I want you to tell the Court, in your judgment as a cannery man and fisherman, how many fish that trap at Cedar Point, if permitted to fish this year, would catch.

A. Well, in all our estimates last fall we never figured that trap at less than 600,000 fish; as a matter of fact, we considered it one of the best, if not the best, location we had in Alaska for a trap site.

Q. Now, if you are prevented from operating this trap at Cedar Point, would you be able to obtain those fish anywhere else? A. No, sir.

Q. Are there other trap site locations open that are near enough to the Chomley cannery to be of use in connection with that cannery, that you know of?

A. I don't know of any trap sites that are open anywhere that are worth having.

Q. Could those fish be procured in the market?

A. No, sir.

Q. They are not for sale anywhere?

A. No, sir.

Q. Now, to what extent, Mr. Burckhardt, would

(Testimony of F. O. Burckhardt.)

the Pacific Alaska Fisheries be damaged in dollars and cents if they were prevented from operating that trap during the season of 1916? [114]

A. I would say that the damage would be at least \$50,000.

Q. I want you to tell the Court now, upon what you base those figures.

A. Well, we base our figures on the trap at Cedar Point, and the Brendible trap, that they should bring in over 50,000, or at least 50,000 cases of fish, on which our profit should be 50 cents a case, which would be \$25,000; the Cedar Point trap is in, and if we are not allowed to operate it we would lose what it cost us, and that cost about \$4,000 to \$5,000 to construct.

Q. Let me interrupt you a minute—if the trap is not operated this year, would you be able to use it next year? A. No, sir.

Q. It will go out during the season?

A. It will go out; some of the web can be used, but outside of the web that can be used I would say our damage would be in the neighborhood of \$4,000 to \$5,000.

Q. To that trap itself?

A. Yes. We will have these 50,000 cases of cans left over, and I have carried over cans in Chilkoot a number of times since I have been there and the damage on the cans has run all the way from 10 to 50 per cent—cans in the winter-time, the change in the atmospheric conditions will cause them to rust,

(Testimony of F. O. Burckhardt.)

and no matter how carefully you pack them away you cannot get away from it. I would say the damage to these cans would be at least 25 cents a case, which would be \$12,500.

Q. What damage, if any, would you sustain as to the labor you have contracted for?

A. We have contracted for our Chinese labor at both of these canneries at so much per case, and this labor must be paid for whether the pack is put up or not, and if we should have 50,000 cases left over it would cost us 35 cents a case, less the price of 4 cents, which goes on to the making of [115] the cans, and 1 cent is for making the box, so what we would be out would be the difference between the 35 cents and 4 cents and 1 cent, or 30 cents a case, which would be \$15,000 for labor for which we would get no return.

Q. Be an absolute loss to you?

A. Absolute loss; then there would be other loss, interest on our investment, our insurance, in addition to this amount,—it would easily be \$50,000, if not more.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. REAGAN.)

Q. Did you ever have a trap at Cedar Point before, Mr. Burckhardt? A. No, sir.

Q. Ever catch any fish there? A. No, sir.

Q. On what do you base your estimate of the number of fish the fish-trap would catch, then?

(Testimony of F. O. Burckhardt.)

A. We base our estimate on the way the fish run in there, and the location of the trap, taking into consideration the way fish travel—the fish coming in, pass up that shore and the majority of them pass close to Cedar Point, and in my opinion the trap at Cedar Point is the best trap in that district.

Q. You mean the best constructed or the best location?

A. It is the best location for a fish-trap in that district.

Q. And you have never had a trap there before?

A. No, sir.

Q. You have never caught any fish there before?

A. No.

Q. Then that is simply a guess as to how many fish you would catch there, isn't it?

A. No, it would not be a guess at all; when you know how fish [116] run, how they travel, where they travel, how the tide sets, you can form an estimate of what you will get out of a certain trap in an ordinary season.

Q. When did you first commence to observe the fish at Cedar Point?

A. When did I first commence to observe them? Oh, I have known there were fish running in there since—the first time I ever observed any fish running in there was in 1914.

Q. About what time in the year did you observe them there?

A. Well, I couldn't tell you; it was during the fishing season, but I couldn't tell you the month.

(Testimony of F. O. Burekhardt.)

Q. How long were you there at that time?

A. I made two different trips there.

Q. The first trip.

A. Well, I wasn't there very long; I was there during one tide, and the next time I was there during one tide, the flood tide, that is when the fish were running.

Q. You stayed in your boat? A. Yes.

Q. Did you anchor the boat? A. Yes.

Q. Or did you tie it up somewhere?

A. No, we drifted there.

Q. When was the next time after 1914 that you went there?

A. I haven't been there since 1914.

Q. And you were only there during two tides, in 1914? A. Yes.

Q. Now, from the observations you made at those two tides two years ago you estimate you can catch 600,000 fish in this trap?

A. Yes—together with information I have received from there.

Q. What other information did you get?

A. Well, it is hearsay—I don't know whether you want it in [117] this or not.

Q. I want to know who told you?

A. It is from information I have gotten from conversations I have had with my brother.

Q. And Tom Heckman?

A. And Mr. Heckman and with Mr. J. R. Heckman, and Mr. George Rounsfall.

(Testimony of F. O. Burekhardt.)

Q. Now, you say you made soundings there in August of last year—who had charge of those soundings?

A. I will tell you where my information came from.

Q. No, if you know who had charge of those soundings, just answer that.

A. I will answer it as I can answer it.

Q. No, if you don't know, don't tell me; if you do know, tell me. A. I was at Ketchikan—

Q. No, answer that question.

A. Well, I am answering it.

Q. I want you to answer that question, if you know who had charge of those soundings.

A. I don't know absolutely.

Q. You don't know personally? A. No, sir.

Q. Who has charge of your soundings, generally, if you know? A. Where?

Q. Anywhere where you choose to sound for trap sites?

A. Well, I have had charge of them at times and Mr. Heckman has had charge of soundings at times.

Q. He is generally the one who had charge of them, or has had for the last two years, isn't he?

A. Not in my district he is not.

Q. Do you know anything about this district of your own knowledge? [118]

A. In a general way.

Q. Then, you don't know who had charge of the soundings—

(Testimony of F. O. Burckhardt.)

A. I know the diver has been out with my brother and he has been out with Mr. Heckman.

Q. Mr. Heckman has charge of this particular trap site, hasn't he?

A. I don't know what you mean by having charge.

Q. Well, he has supervision over it—he is superintendent, isn't he?

A. He was superintendent of the construction of that trap, yes.

Q. And naturally you would think he knew something about the soundings there if he was superintending the construction, wouldn't you?

A. I think he knew all about the soundings—no question about that.

Q. Do you know whether or not Mr. Heckman made more than one sounding operation there?

A. Whether the diver went down at more than the trap I have referred to?

Q. More than one trip when you made the soundings for this trap.

A. I don't know whether he had been out there at any other time or not.

Q. Is it customary or usual for your company to make soundings twice in the same location?

A. I have done that, yes; it is not customary; something may turn up that would make it necessary to send the diver down again.

Q. Well, if Mr. Heckman knew the conditions there from having made soundings, he would not likely make them over again, would he?

A. He might; he might want to find out if it was

(Testimony of F. O. Burckhardt.)

possible to run his lead in a different direction, or whether it was possible to run his trap out farther than his soundings took him. [119]

Q. Well, if he had made soundings at any time that satisfied him that it was a possible trap site, would he, under those conditions, make additional soundings?

A. I don't know why he would if he was satisfied everything was all right.

Q. Now, you know that the waters where this trap is located and where your other traps are located are waters of the United States, don't you?

A. They belong to the United States.

Q. And you know there is an inhibition in the law against the placing of any structure in the waters of the United States without permission from the War Department, don't you?

A. I don't know that.

Q. You don't know that?

A. No, I don't.

Q. Don't you know it now?

A. No, I don't know it now.

Q. You don't know that is the law?

A. No, sir.

Q. You never got any permission from the War Department for the construction of any of your traps, did you? A. Yes, sir; we did.

Q. Why did you do that?

Mr. HELLENTHAL.—We object to that—this man is not passing a law examination.

(Testimony of F. O. Burckhardt.)

The COURT.—Objection sustained.

Q. Now, do you suppose if there were any fish caught—you are a cannery man and know the condition of the fish market for canning purposes around Ketchikan and in that neighborhood?

A. Yes, sir.

Q. Do you know whether there would be a market for fish caught off Cedar Point, if you didn't catch them?

A. Surely there would be a market for them.
[120]

Q. So if the natives went out and caught these fish they could sell them, couldn't they?

A. How are they going out to catch them?

Q. Answer my question.

A. If it was possible for them to catch them they could sell them.

Q. They would have a market for all of the fish they caught off Cedar Point, wouldn't they?

A. Yes, sir.

Q. And the market is such now that it is hard for you to buy enough fish? A. Yes.

Q. When your company put in that trap they knew it wouldn't be fit for service next year, didn't they?

A. Why, yes—as I said before, we figured that the piling would be gone, but part of the web could be used next year—how much of the web I don't know.

Q. Did you know that your brother had had any correspondence with the Secretary of the Interior

(Testimony of F. O. Burckhardt.)

this spring? A. I did not.

Q. Didn't know anything about that?

A. No; I left there very early.

Q. About how early?

A. I left Seattle, I think it was about the 24th of March, or even earlier than that, I think it was.

Q. Now, when you contract for your labor you have to pay your labor bills whether you catch the fish or whether you don't; is that it?

A. We pay our labor bills, yes.

Q. As a matter of business and as a matter of law you pay your labor for what you contract for?

A. Certainly.

Q. And when you contract your labor you estimate the labor you will require? [121]

A. We estimate the labor we will require on our estimated pack.

Q. And if you fall short of your pack you lose on that labor? A. Certainly.

Q. And if you exceed your estimated pack you are a little ahead, aren't you?

A. Yes, we are a little ahead.

Mr. REAGAN.—That's all.

(Questions by The COURT.)

Q. Mr. Burckhardt, I understood you to say in the Ketchikan district the fish begin to run about July 1st?

A. Well, they run before that, but there isn't much of a run; ordinarily we figure it about the 4th of July; there are fish running in there now, but not of any consequence.

(Testimony of F. O. Burckhardt.)

Q. Neither trap, then—neither the Brendible trap nor this trap at Cedar Point is fishing now?

A. No.

Q. And won't be fishing until about the 1st of July?

A. Well, if we were allowed to operate the Cedar Point trap it would be getting some fish now—when I said the 1st of July I meant fish of any consequence.

Q. That is when the run begins?

A. That is when the run begins.

Q. And the fish which come in between this time and the 1st of July are simply advance scouts, you might say—runners?

A. Yes, advance guards. Now, as far as the Brendible trap goes, we haven't put the Brendible trap in. The Cedar Point trap at this time would be getting some fish—I don't know how many, but it would be getting some fish.

Q. The Brendible trap is not in operation this year?

A. No, sir; we haven't put it in; we have another trap up above there, on Gravina Island, that last week caught, I think it was 300 fish, and if you take all of your traps and get 300 fish out of them you would get a day's run now and then. [122]

The COURT.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. The construction of the Brendible trap had not

(Testimony of F. O. Burckhardt.)

yet commenced before these proceedings to enjoin you were instituted? A. No, sir.

Q. You were unable to construct the trap on that account, because you were enjoined from constructing traps on that Island generally and you just left the thing alone? A. Yes, sir.

Mr. HELLENTHAL.—That's all.

Recross-examination.

(By Mr. REAGAN.)

Q. And you say it is too late now to build a cannery? A. Yes, sir.

Q. Or to build a trap? A. No.

Mr. REAGAN.—That's all.

(Witness excused.) [123]

The defendants, to further maintain the issues on their part, read in evidence the affidavit of Joe Jenkins, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
Division No. 1, at Ketchikan.*

No. 263-KA.

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of Joe Jenkins.

United States of America,
Territory of Alaska,—ss.

Joe Jenkins, being first duly sworn, on his oath deposes and says: I am trapman for Alaska Pacific Fisheries, a corporation, defendants herein, and have been in the employ of said corporation as trapman at all the times hereinafter mentioned; that on the 7th day of April, 1916, I went to the trap site known as Cedar Point, with a tow of piles, which said site is situate in a westerly direction from the town of Metlakatla and in deep water off the westerly shore of said island, and about 2,000 feet from extreme low-water mark, and on the said date, to wit, the 7th day of April, 1916, I commenced driving a fish-trap on said trap site and continued driving the same until it was completed on the 18th day of April, 1916. That all of the lead to said trap is driven in deep water and no part thereof is nearer than about 400 feet of extreme low tide and that no part of said lead is less than about 1,000 feet in distance from the shore line of Annette Island or the shore line of any land whatsoever.

JOE JENKINS. [124]

Subscribed and sworn to before me this ninth day of June, 1916.

JAMES M. SHOUP,
Notary Public in and for the Territory of Alaska.
My commission expires June 20, 1919.

Due service by copy admitted this 15th day of June, 1916.

JOHN J. REAGAN,
Attorney for Plaintiff.

Filed in the District Court, District of Alaska,
First Division. Jun. 5, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy.

The defendants, to further maintain the issues on their part, read in evidence the affidavit of Ernie Copeland, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
Division No. 1, at Ketchikan.*

No. 263-KA.

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of Ernie Copeland.

United States of America,
Territory of Alaska,—ss.

Ernie Copeland, being first duly sworn, on his oath deposes and says: I am now the captain of the "Wm. T. Muir," which said boat is the property of the defendant corporation herein, that I am now captain of said boat and employed as such by the said de-

fendant corporation, and have been captain of said boat, and employed as aforesaid, at all times herein-after mentioned; that heretofore, to wit, on the 7th day of April, 1916, I left the Chomley Cannery, the property of the said defendant corporation, with said boat having in tow a pile driver and a tow of piles, having on board of said boat the trapman together with a trap-driving [125] crew on said pile-driver; that I arrived at Cedar Point off the westerly shore of Annette Islands at the trap site known as Cedar Point, distant about four miles from the Town of Metlakatla and I remained at said trap site, with said boat the "Wm. T. Muir" and the said pile-driver, until a fish-trap was driven on said trap site; on the completion of said trap, on the 18th day of April, 1916, I towed said pile-driver from said trap site, the trapman and trap-driving crew leaving at the same time on board the said pile-driver:

That I have read over the affidavit of Joe Jenkins, subscribed and sworn to on this 9th day of June, 1916, regarding the location of said Cedar Point trap site and the distance that said trap and the lead thereto are from the shore line of Annette Island, and from my observations while said trap was being driven, at the time aforesaid, believe that the statements contained in said affidavit are true.

ERNIE COPELAND.

Subscribed and sworn to before me this 9th day of June, 1916.

JAMES M. SHOUP,
Notary Public in and for the Territory of Alaska.
My commission expires June 20th, 1919.

Service by copy admitted this 15th day of June, 1916.

JOHN J. REAGAN,

Asst. U. S. Atty.

Filed in the District Court, District of Alaska, First Division. Jun. 15, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

Whereupon the DEFENDANTS RESTED.
[126]

REBUTTAL.

The plaintiff, to further maintain the issues on its part, in rebuttal, read in evidence the affidavit of John J. Reagan, which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
First Division, at Ketchikan.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES etc. et al.,

Defendants.

Affidavit of John J. Reagan.

United States of America,
Territory of Alaska, Juneau,—ss.

Jno. J. Reagan, being duly sworn, deposes and says: That the attached paper is a telegraphic copy of an affidavit executed by Charles Brendible on June 14th, 1916, at an hour too late to permit of its being forwarded by mail, therefore, upon request of

affiant same was telegraphed so that it may be used in the hearing of the show cause order herein.

JNO. J. REAGAN.

Subscribed and sworn to before me this 15th of June, 1916.

[Seal]

INA S. LIEBHARDT,
Notary Public for Alaska.

My commission expires September 29, 1919.

[Title of court and cause.]

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES etc.,

Defendants.

Affidavit of Charles Brendible.

Chas. Brendible, being first duly sworn, upon oath deposes [127] and says that he is resident and inhabitant of Annette Islands Reserve, Alaska, that he is not in any manner interested or a party with the Alaska Pacific Fisheries Co., in the erection and maintaining of a fish-trap near Cedar Point, Annette Island, Alaska, that he has never at any time entered into any agreement with the aforesaid Company whereby it was to erect the said trap at the said location or at any other location at Annette Island, Alaska, that he is in no manner interested in the said trap and so far as he knows the said trap was built by the said company independent of any resident and inhabitant of the Annette Islands Reserve or Metlakatlan. Affiant further says that dur-

ing the month of May, 1915 A. D. he employed Mr. Tom Heckman, manager of the above-mentioned company to survey a trap site at the said point and talked with the said manager in regard to erecting a trap at the said site for the year 1916 A. D., but that he did not enter into any agreement with the said manager or any other officer or representative of the said company whereby the said company was to build the said trap; affiant further says that he is not possessed of any permit from the council of the Annette Islands Reserve to erect a fish-trap at the said location and has never represented to the defendant company that he had a permit for the erection of a trap at the said location and has never assigned or attempted to assign any such permit to the said defendant company.

(Signed) CHAS. BRENDIBLE.

Subscribed and sworn to before me this 14th day of June, 1916.

[Seal]

D. NOLL,

Notary Public for Alaska.

Filed in the District Court, District of Alaska, First Division. June 16, 1916. J. W. Bell, Clerk.
By C. Z. Denny, Deputy.

The plaintiff to further maintain the issues on its part, in rebuttal, read in evidence the affidavit of John J. Reagan, which was in words and figures as follows, to wit: [128]

*In the District Court for the District of Alaska,
District No. One, at Ketchikan.*

No. 263-KA.

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Affidavit of John J. Reagan.

Territory of Alaska,
Juneau Precinct,—ss.

Jno. J. Reagan, being duly sworn, on oath deposes and says: that he is Assistant United States Attorney for the First Division of the District of Alaska, representing the plaintiff at this hearing; that the plaintiff herein has at all times since the making of said reserve had control and supervision of said reserve and of the operations thereon of the said inhabitants thereof and of one William Duncan mentioned in defendant's answer as Father Duncan, and that at all times said Duncan was present on said island only with the consent of the plaintiff; that the plaintiff annually appropriated sums of money for many years for the use and benefit of said Metlakahtlans and the same was expended by permission of the plaintiff for the use of said Metlakahtlans by

the said William Duncan; that said sums amount in the aggregate to upwards of \$15,000; that said William Duncan has at all times been amenable to the laws of the United States and to the supervision of the plaintiff; that all moneys devoted to the industrial, moral and educational concerns of said reserve and the inhabitants thereof were furnished either by the plaintiff or by philanthropic people and were furnished to said Duncan in trust for the uses and benefits of said inhabitants of said reserve and that out of said sums donated by said philanthropic persons and the sums appropriated by the plaintiff the inhabitants of said reserve were brought to a fair state of industry and civilization; [129] and that said Duncan by reason of differences with the plaintiff as to continuing the advancement of the inhabitants of said reserve along the lines indicated in this affidavit, was superseded by the Bureau of Education of the plaintiff wholly for the benefit of the inhabitants of said reserve and that whatever disloyalty there may be to the plaintiff on the part of a few of the inhabitants of said reserve is due solely to the influence and persuasion of said William Duncan. The defendant well knows and knew at and prior to the time it began the construction of said trap and intrusion in said waters that the plaintiff, as part of its administration of said reserve, never permitted any trap to be driven within the waters surrounding said reservation and through its Department of the Interior for the first time since the creation of said reserve granted a permit to a

Metlakahtlan to drive a trap in said waters and that subsequently it, said Department, created the Annette Council with authority to grant permits to build traps in said waters to the persons lawfully inhabiting said reserve, to wit, said Metlakahtlans; and defendant also knew prior to its intrusion in said waters and the construction of said trap that such permits were required from said Council or said Interior Department before any trap could be driven in said waters, and also knew prior to its intrusion in said waters and prior to the construction of said trap that such permits were granted only to the Metlakahtlans and other Indians residing on said reserve, and that others were not permitted under the regulations of the Secretary of the Interior to construct or maintain traps in said waters. And defendant knew prior to its intrusion in said waters and prior to the construction of said trap that the fish caught in said waters were disposed of wholly for the benefit of said Metlakahtlans and other natives inhabiting said reserve, and knew that it was a trespasser in said waters in entering therein and constructing said trap. And defendant also knew that heretofore it has obtained its supply of fish so far as the same are derived from said waters, by purchasing [130] the same from the Metlakahtlans who caught them, and that it can still do so.

JNO. J. REAGAN,

Asst. U. S. Atty.

Subscribed and sworn to before me this 15th day of June, 1916.

[Seal]

INA S. LIEBHARDT,

Notary Public.

My commission expires September 29, 1916.

Rec'd a copy of above June 15, 1916.

HELLENTHAL & HELLENTHAL.

Filed in the District Court, District of Alaska, First Division. Jun. 15, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

Testimony of John J. Reagan, for Defendants.

Thereupon, upon the request of the defendants, JOHN J. REAGAN was called to the stand and testified in answer to questions as follows:

Cross-examination.

(By Judge HANFORD.)

Q. Mr. Reagan, how long have you been residing in Alaska? A. About 14 years.

Q. Are you personally acquainted with William Duncan? A. Yes, sir.

Q. Have you become, in any way, personally familiar with the operations of the colony on Annette Island since it has been inhabited by the Metlakhtlans? A. Yes, sir, officially.

Q. To what extent—in what way? Just explain to the Court what your actions have been that gave you personal knowledge of the matters you have sworn to in this affidavit.

A. Ever since I have been in the United States Attorney's office, first acting as United States At-

(Testimony of John J. Reagan.)

torney, and latterly as Assistant United States Attorney, the affairs of the Metlakahtla Indians have been under the supervision of the Department of [131] Justice, and under my supervision for nearly a year, and as Assistant United States Attorney all of these matters have been thrashed over in my office and in court and before the grand jury, and all of the statements that I have made here are statements made by Mr. Duncan himself, under oath, in the grand jury-room at Ketchikan.

Q. You are making a public revelation, now, are you, of testimony given in the grand jury room?

A. I am not; Mr. Duncan has also made those same statements to me in the office of the United States Attorney at Ketchikan, not once but many times.

Q. You state in this affidavit that Duncan's presence on the Island was with the consent of the plaintiff—where did you get that information?

A. From himself.

Q. From himself?

A. Yes, sir; he told me how he first happened to go there, and how he happened to get the place set aside as a reservation, and he told me where he came from, and his—

Q. I am asking now specifically about this consent of the plaintiff—was that by an Act of Congress, or by what authority was that consent given?

A. He got his consent legally, I suppose you would call it, by procuring an Act of Congress setting aside the reserve.

(Testimony of John J. Reagan.)

Q. Does that Act of Congress mention Father Duncan as being the only one permitted to occupy the island? A. It does not.

Q. Is there any other Act of Congress that specifically gives him permission to occupy that island?

A. To occupy the island with his natives—he brought them there and had charge of them.

Q. Now, isn't that just an inference of your own that that is included in this permission of the Metlakahtlans because he has been with them? [132]

A. It is not; I have had conversations with him and correspondence with the Department.

Q. In what way, and what correspondence have you got to base this statement on that the United States ever gave permission to William Duncan to occupy Annette Island?

A. There is considerable correspondence in the office.

Q. Is that as near as you can come to answering my question? A. Yes, that is about as near.

Q. Now, what knowledge have you with regard to the appropriation of sums of money for many years past for the use and benefit of the Metlakahtlans?

A. Statutes of the United States and Duncan's statements.

Q. Can you give reference to the statutes making those statements?

A. I cannot; I tried to find them yesterday, but I have seen them many times; and also Duncan's statements to me.

(Testimony of John J. Reagan.)

Q. What knowledge have you with respect to the sums of money being expended by permission of the plaintiff for the use of Metlakatlans?

A. Mr. Duncan's own statements.

Q. Then you have only hearsay testimony to offer this Court as to the expenditure of money?

A. Well, I could have gotten more testimony if I had subpoenaed his books, but I didn't want to quarrel with him—but he admitted that to me.

Q. I wish you would give the definition of what you regard as "the expenditure of moneys devoted to the industrial, moral and educational concerns of said reserve"—what expenditure was there for industrial concerns?

A. I cannot segregate it, sir.

Q. Cannot segregate it?

A. No, no one but Mr. Duncan can do that.

Q. No one but Father Duncan can do that?

A. No; Mr. Duncan does not want to be called Father Duncan—he told me not to do that. [133]

Q. Isn't he generally known as Father Duncan?

A. Yes, they call him that but he objects to it.

Q. I don't want to offend him; I use it because I got in the habit of using it when speaking of him. What knowledge have you with respect to money being contributed by philanthropic persons and furnished to Father Duncan in trust for the use and benefit of the inhabitants?

A. Statements of Father Duncan.

Q. All his statements—do you know where the money came from that paid for the construction of

(Testimony of John J. Reagan.)

the salmon cannery that was on Annette Island that has been destroyed by fire?

A. Contributions made to Father Duncan, for the benefit of Metlakahtlan natives—especially one sum of something like \$11,000 contributed by a Boston gentleman, whose name I don't recall, which was afterward returned to him out of the proceeds of the cannery.

Q. Have you any knowledge on that subject other than what you have obtained from hearsay, or information from Duncan himself? A. That's all.

Q. In regard to the sawmill on Annette Island and the water works and all the improvements that are there, is your knowledge with respect to the source of capital by which those things were provided derived in the same way, from statements of Duncan?

A. No, some of my knowledge comes from Statutes of the United States, some from official correspondence with the Interior Department, and some from correspondence from the Department of Justice.

Q. Was there ever any specific appropriation by Congress of money for a sawmill or water works, or any of these improvements?

A. No, sir; not that I know of.

Q. Do you know who superintended the construction of the cannery and the sawmill and the church and the other improvements [134] they have there? A. No, sir.

Q. You wouldn't state who superintended the construction of them? A. No, sir.

Q. You know the history of the Metlakatla tribe

(Testimony of John J. Reagan.)

and their emigration to Annette Island, do you?

A. Very meagerly from Duncan's statements.

Q. How long had the Metlakahtlans been occupying Annette Island before Congress took any action recognizing their right to be there?

A. Two or three years.

Q. Was that before or after you came to Alaska?

A. That was before.

Q. And your knowledge on that subject is such as you have obtained in a general way?

A. Historically.

Q. Has there been any written or public history covering that point?

A. Well, I believe there is but I haven't read it.

Q. Couldn't refer to any written history?

A. Somebody has written a book that Duncan didn't like, and other people have written about it, but I didn't pay any attention to it.

Q. In this affidavit that you read to the Court, the affidavit of yourself, you make statements in regard to the knowledge of these defendants with respect to what was done and contemplated about these fisheries—upon what do you base your authority for making the statements as to the defendants' knowledge on these subjects?

A. Statements made by Mr. Heckman, who is their foreman, or some such officer of the company.

Q. Have you had personal interviews with Mr. Heckman on these subjects? [135]

A. I have not; I have the sworn statements of others.

(Testimony of John J. Reagan.)

Q. Is that in evidence?

A. Some of it is; there are some affidavits there in which it is related.

Q. Then all that is involved in this affidavit of yours is simply an enlargement on affidavits made by somebody else that are already in the case?

A. Oh, no, by no means.

Q. You make this statement in your affidavit, "The defendant well knows and knew at and prior to the time it began the construction of said trap and intrusion in said waters that the plaintiff as part of its administration of said reserve never permitted any trap to be driven within the waters surrounding said reservation and through its Department of the Interior for the first time since the creation of said reserve granted a permit to a Metlakahtlan to drive a trap in said waters"—you state this as a positive fact, that the defendants knew that—now, how do you get the information as to the knowledge of the defendant on that subject?

A. The knowledge of their superintendent is their knowledge—he knew all about it.

Q. Their superintendent is who?

A. Mr. Heckman.

Q. Did Mr. Heckman communicate personally to you that he had any such knowledge? A. No.

Q. You state this on the authority of Mr. Heckman because somebody else has made an affidavit that Heckman had such knowledge?

A. Partially, and partially because Mr. Heckman lives there and knows the condition of every cannery

(Testimony of John J. Reagan.)

man down there, and knows the condition of your clients, and your clients know the conditions, too.
[136]

Q. That is a pretty broad statement—you pretend now to tell this Court what every person in that vicinity knew—have you circulated among those people to such an extent that you know what they knew? A. I know they knew it.

Q. You sit there in that chair under oath and tell this Court that they do know it?

A. Yes, sir, I do just exactly that.

Q. You say in this affidavit, “And defendant knew prior to its intrusion in said waters and prior to the construction of said trap that the fish caught in said waters were disposed of wholly for the benefit of said Metlakahtlans and other natives inhabiting said reserve and knew that it was a trespasser in said waters in entering therein and constructing said trap.”

A. Yes, sir; Mr. Burckhardt himself has so stated; he had an arrangement with Brendible last year and he knew what that arrangement was, and he knew he couldn't drive a trap there without a permit from the Annette Council given to Metlakahtlans, and he also knows that the Metlakahtlans had to pay out of the proceeds of the trap for the work done on it.

Q. You mean to make a direct contradiction of Mr. Burckhardt's testimony when he said he had no such knowledge?

A. His company had—maybe he personally didn't have it.

Q. His company had? A. Yes, sir.

(Testimony of John J. Reagan.)

Q. Can a corporation have any knowledge of facts or law except through the intelligence of its officers?

A. A corporation is bound to know the law the same as any other person.

Q. You assume then that this is knowledge that was imputed to the corporation by the law itself—that implies that there *there* is some law on the subject; can you cite this Court [137] to any law that prohibits fish-traps in the waters surrounding Annette Island except by permission of the Secretary of the Interior? A. Yes, sir.

Q. State the law, please.

A. The law creating the reserve, Act of March 3, 1891.

Q. I have here and show you a paper purporting to be a copy of the President's message and in which the only law on the subject that I know of is quoted—I wish you would look at that and see if that is a correct quotation of the law you are now citing to the Court. A. That is the one I refer to.

Q. Do you know of any other law which prohibits fish-traps in the waters surrounding Annette Island excepting this particular Act of Congress?

A. Yes, sir.

Q. This is all? A. Why, I know more.

Q. Is there any word or phrase in that law that is prohibitive of the exercise of the right of fishing in those waters? A. Yes, sir.

Q. Read it to the Court.

A. "Said Islands be, and the same are, hereby set

(Testimony of John J. Reagan.)

apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior."

Judge HANFORD.—That is all.

Whereupon the PLAINTIFF RESTED. [138]

SURREBUTTAL.

Testimony of C. H. Hanford, for Defendants (In Surrebuttal).

Whereupon the defendants, to further maintain the issues on their part, in surrebuttal, introduced as a witness C. H. HANFORD, who, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You may state your name, please.

A. Cornelius H. Hanford.

Q. Where do you reside? A. Seattle.

Q. How long have you resided there?

A. Well, since I first commenced to live in Seattle it is a matter of about 61 years.

Q. Do you know Father Duncan?

A. I have met him, yes.

Q. How long have you known Father Duncan?

(Testimony of C. H. Hanford.)

A. Personally not over ten years.

Q. What was the first time that you visited the colony in charge of Father Duncan?

A. I first visited the Metlakahtla colony when it was located in British Columbia, village of Metlakahtla, and about all I can tell in this matter, if you will allow me to give it in a narrative I can give it very shortly.

Q. All right, proceed that way.

A. In the month of August, 1887, I was a passenger on the steamship "Olympian," making the trip from Seattle to Lynn Canal, Sitka and other places. There was quite a large list of passengers making the summer excursion to visit Alaska at that time, and there was included in that list of passengers [139] Senator West, Senator Farwell and Senator Don Cameron—Senator West was from Missouri, Senator Farwell was from the state of Illinois, and Senator Cameron was from the state of Pennsylvania; there were other prominent public-spirited citizens of the United States making the trip—Colonel Elliott F. Shepard, publisher and editor of a newspaper in New York, and several members of the faculty of Harvard University and others whom I cannot recall to name them, but it was a company composed largely of distinguished American citizens. On the journey northward the passengers were joined by the Reverend Sheldon Jackson—I don't remember at what point he came on, but he made the remainder of the journey northward and returned with us. He was at that time actively engaged in educa-

(Testimony of C. H. Hanford.)

tional work among the Indians of Alaska, and became a source of information to the passengers on the boat, telling them all about Alaskan natives and so on, and he gave certain information about the Metlakahtla Indians, that became a subject of interest among all the passengers on the boat, especially these senators and prominent citizens. His information was generally to the effect that the Metlakahtla Indians were a remarkable people in themselves—that they had been formerly cannibals; that they had been converted to Christianity through the ministrations of Father Duncan—I cannot avoid calling him Father Duncan because that is the way we generally have known him—that they had become converted to Christianity and discontinued their savage practices, especially cannibalism and had made wonderful progress in becoming civilized and acquiring skill in mechanical arts, and along educational lines, and in their adoption of civilized habits; that these Indians were at that time in a state of revolt against the authorities of the Church of England, which had assumed jurisdiction over that village, by reason of a disagreement between Father Duncan and the Bishop as to certain rites in the ceremonies of the church [140] and the doctrines of the church, and because of this disagreement the Bishop had deposed Father Duncan from his position as being manager in charge of that village; that the Indians were in a state of revolt against the Bishop because Father Duncan had been deposed and they would not accept the dogmas and ceremonies that

(Testimony of C. H. Hanford.)

the Bishop insisted to be observed in their religious worship. On account of that information being given by Dr. Sheldon Jackson, the passengers became so much interested in the subject that they persuaded the Captain to call at Metlakahltla on the return of the steamer. We landed there and met some of the Indians, and most of the passengers spent all the time we had there in conversing with them and getting all the information we could from them in regard to their affairs. The story told by Sheldon Jackson was confirmed by the Indians as to their disagreement with the Bishop and their being in sympathy with Duncan. I didn't see Duncan at that time, and my recollection is that he was not present, but the new manager who had been placed in charge by the Bishop was there and different ones of the passengers conversed with him.

The passengers, and especially Colonel Shepard and the Senators, were very much surprised by the appearance of civilization and thrift among those Indians—we saw their houses that they lived in; they were neat cottages; the women and the children were well dressed, the houses were well kept and clean; they had substantial furniture; they had good cooking utensils; they had good beds with nice clean linen, and everything being so civilized attracted us because it was different from what we had observed among other Indians in this locality. We were shown the sawmill that they operated; we were shown a very commodious church that we were told had been built by the Indians by their own hands from lumber

(Testimony of C. H. Hanford.)

which they had manufactured in their own sawmill, and that the sawmill was also constructed by them. They had a pipe organ in that church, and we were told the ceremonies [141] were conducted by the Indians in the English language, that they were proficient in music and took great pleasure in the ceremonies of worship according to the same style that the white people do. They appeared to be capable, thrifty, well-to-do people, able to make their own way in the world just like other people, and as far as we had any knowledge on the subject they had developed entirely under the teaching and direction and management of Duncan.

Q. This was in British Columbia where they were located at that time?

A. Yes, this was in British Columbia.

Q. Prior to the time that they emigrated to Annette Island?

A. That was prior to the time that they emigrated to Annette Island, and I heard some conversation between some of the passengers—and I think Colonel Elliott was especially concerned—and the Indians and that conversation was that the Indians, rather than submit to the exactions of the Bishop, would leave there—they would abandon all these improvements they had made there and leave there if they could find a place to go to. Whether there was any specific information or welcome they would receive if they moved over on to American country I don't remember, but the feeling was that they would not submit to the Bishop and they would move away.

(Testimony of C. H. Hanford.)

Q. And this led to their moving to Annette Island?

A. That is inferential, I cannot say it is a fact.

Q. And it was after this that the Act was passed setting aside Annette Island?

A. The Act was passed in 1891; they had moved there two or three years before they passed the Act.

Q. Do you know who was in charge of the colony when they moved?

A. Only as it is a matter of general knowledge I know Father Duncan has been the head man in connection with the colony until recently. [142]

Q. From the earliest time on? A. Yes.

Mr. HELLENTHAL.—That is all.

Mr. REAGAN.—No questions.

WITNESS EXCUSED.

Whereupon the DEFENDANTS RESTED.

And both sides having submitted all of their evidence and having rested their case, it was agreed in open court by counsel for the respective parties, that all the foregoing affidavits and testimony heard upon this hearing might be considered by the Court as evidence upon the trial of the cause and that the cause be considered on the merits and be adjudged by the Court as upon the final trial, it being agreed by both parties that no other or further evidence was available to prove the issues on either side, so that in order to save expense to both parties the case was to be considered as being heard upon final trial and all the evidence before the Court as evidence adduced upon a trial on the merits. Whereupon the cause was submitted to the Court for determination on the merits as aforesaid. [143]



Ernest P. Walker.
No. 2.

Scale 100 yds.

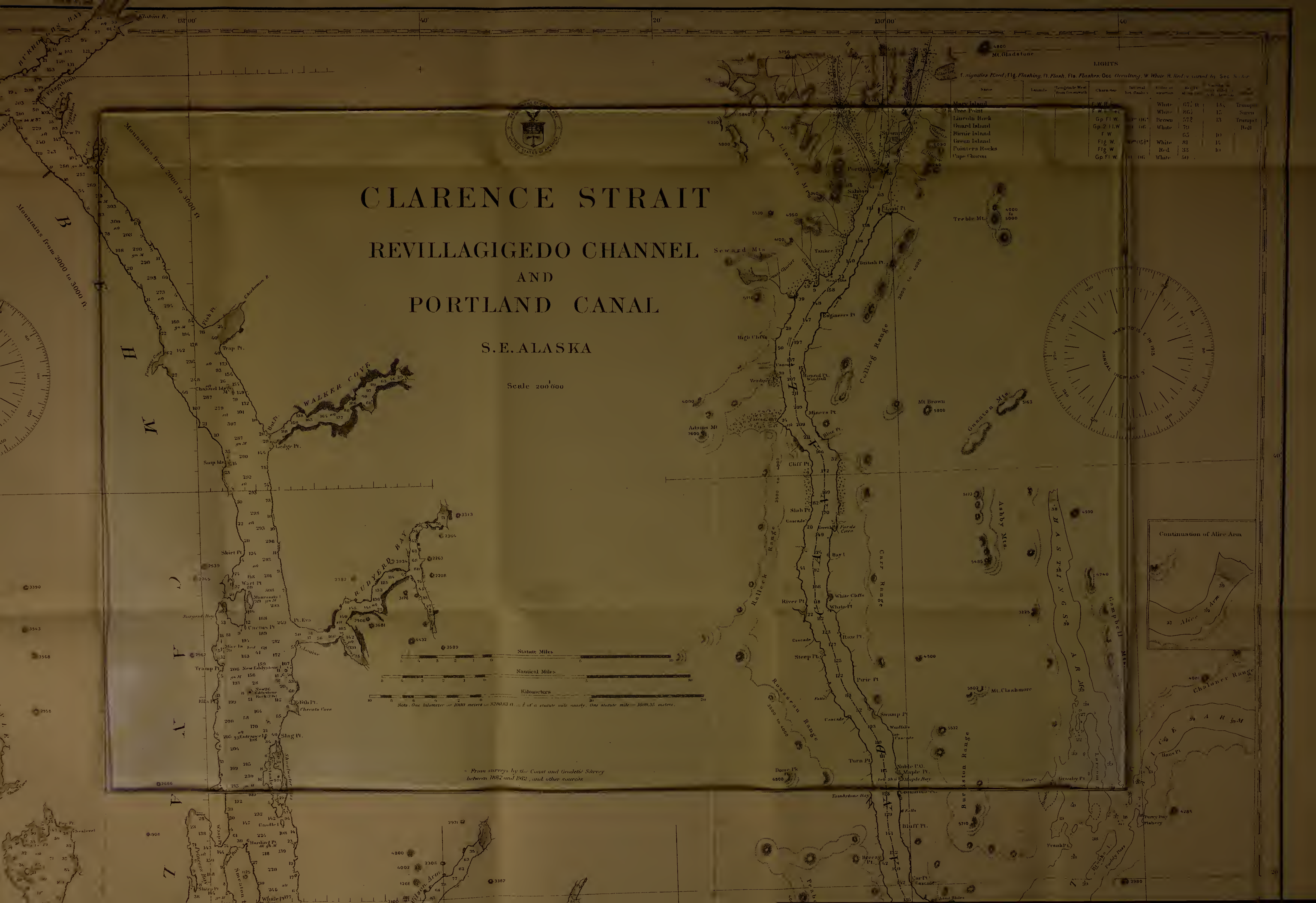


Exhibit No. 2 to Affidavit of Ernest P. Walker.

Defendant's Exhibit No. 1—Chart of Clarence Strait—Revillagigedo Channel and Portland Canal S. E. Alaska.

[Endorsed]: Defts. Exhibit No. 1. Received evidence Jun. 15, 1916, in Cause No. 263-KA. and 1468-A. J. W. Bell, Clerk. By John T. Reed, Deputy. [146]





CLARENCE STRAIT REVILLAGIGEDO CHANNEL AND PORTLAND CANAL

S.E. ALASKA

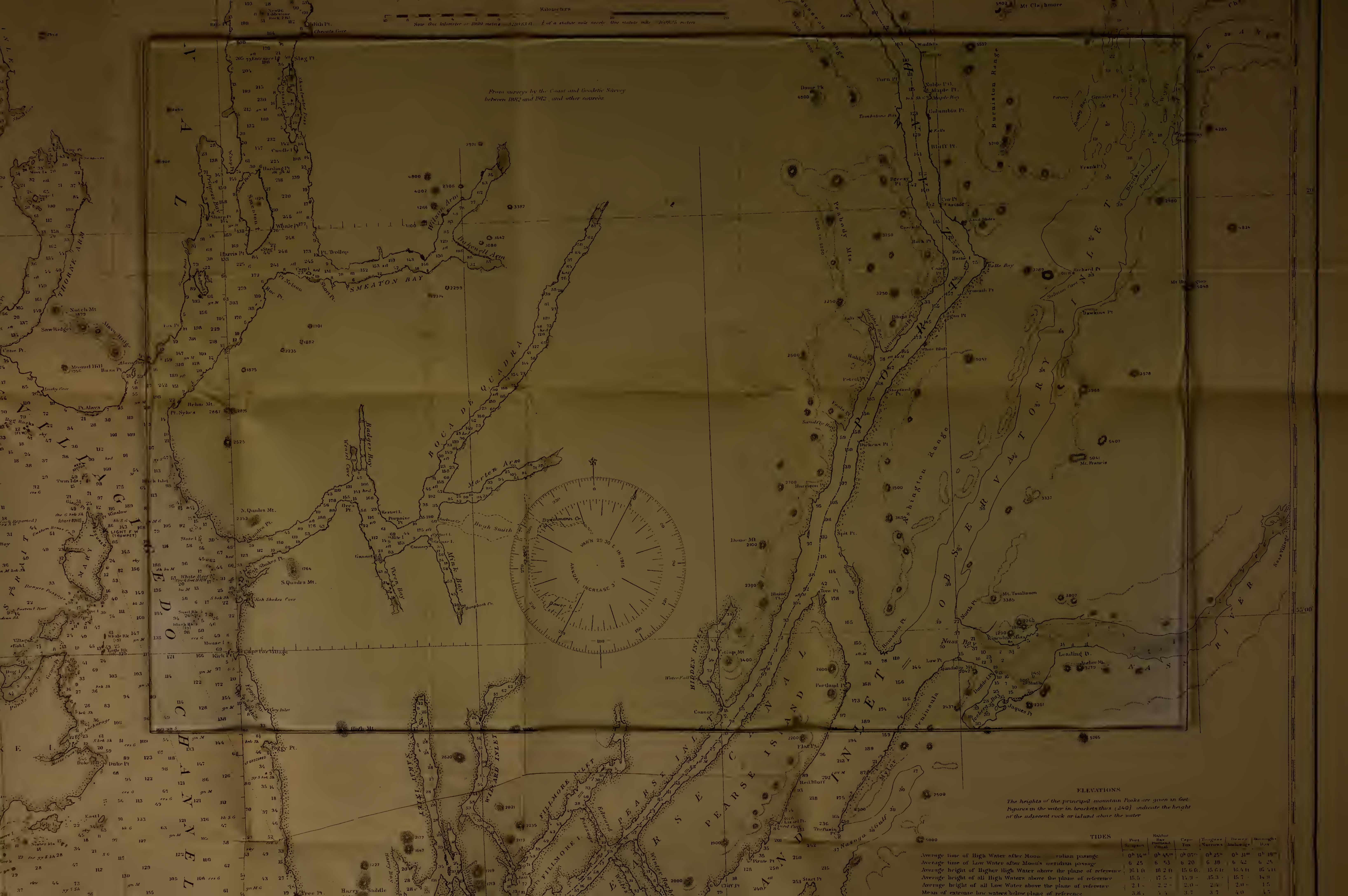
Scale 200,000

LIGHTS						
Name	Latitude	Longitude West from Greenwich	Character	Intensity	Color of structure	Remarks
Marble Island	57° 05' N	133° 05' W	Fl. W. R.	10	White	67. R
Two Point	57° 05' N	133° 05' W	Fl. W. R.	10	White	67. R
Lincoln Rock	57° 05' N	133° 05' W	Fl. W. R.	10	White	67. R
Green Island	57° 05' N	133° 05' W	Fl. W. R.	10	White	67. R
Pointers Rocks	57° 05' N	133° 05' W	Fl. W. R.	10	White	67. R
Cape Chatham	57° 05' N	133° 05' W	Fl. W. R.	10	White	67. R



From surveys by the Coast and Geodetic Survey between 1882 and 1912, and other sources





From surveys by the Coast and Geodetic Survey
between 1882 and 1912, and other sources



ELEVATIONS

The heights of the principal mountain Peaks are given in feet
Figures in the water in brackets thus (240) indicate the height
of the adjacent rock or island above the water

TIDES

Average time of High Water after Moon's meridian passage

Average time of Low Water after Moon's meridian passage

Average height of Higher High Water above the plane of reference

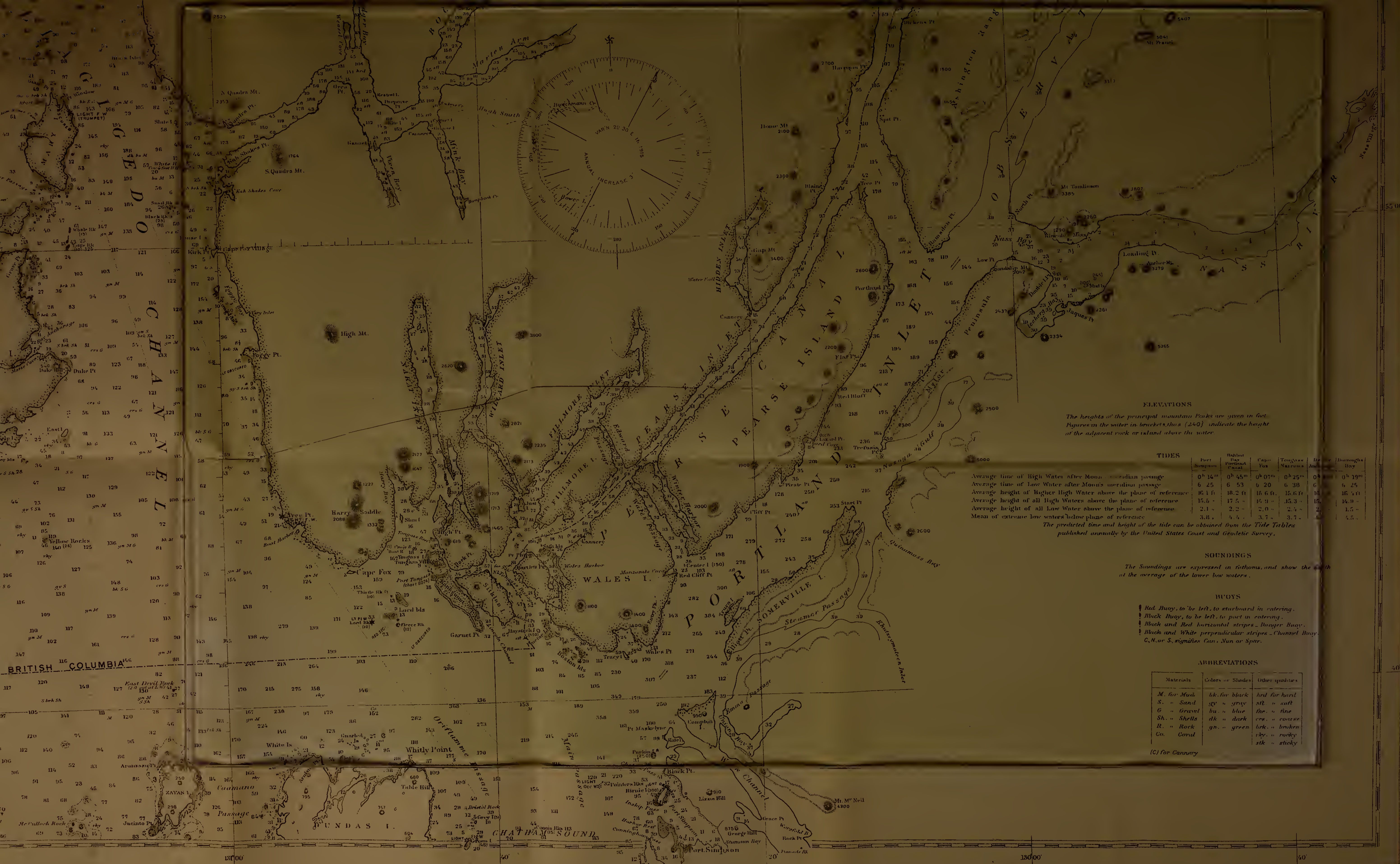
Average height of all High Waters above the plane of reference

Average height of all Low Waters above the plane of reference

Mean of extreme low waters below plane of reference

Port Simpson	Harbour Deception	Capo Fox	Tongass Narrow	Heceta Narrow	Barrow
0 ^h 14 ^m	0 ^h 45 ^m	0 ^h 05 ^m	0 ^h 25 ^m	0 ^h 31 ^m	0 ^h 19 ^m
6 25	6 53	6 20	6 38	6 42	6 25
10 10	10 20	10 00	10 10	10 15	10 10
15 5	15 15	15 0	15 10	15 15	15 10
21 1	21 1	21 0	21 0	21 0	21 0
3 8	3 8	3 7	3 7	3 7	3 7





ELEVATIONS
The heights of the principal mountain peaks are given in feet. Figures in the water in brackets, thus (240) indicate the height of the adjacent rock or island above the water.

TIDES					
Port Simpson	High Bay	Port Fox	Tongue Narrows	De Anza	Burrage Bay
0 ^h 14 ^m	0 ^h 45 ^m	0 ^h 07 ^m	0 ^h 25 ^m	0 ^h	0 ^h 19 ^m
6 25	6 53	6 20	6 38	6	6 25
16 11	16 21	15 6	15 6	16	16 11
15 5	17 5	14 1	15 3	15	14 9
2 1	2 2	2 0	2 4	2	1 5
3 8	4 4	3 7	3 7		4 5

Average time of High Water after Moon's meridian passage
Average time of Low Water after Moon's meridian passage
Average height of Higher High Water above the plane of reference
Average height of all High Waters above the plane of reference
Average height of all Low Waters above the plane of reference
Mean of extreme low waters below plane of reference

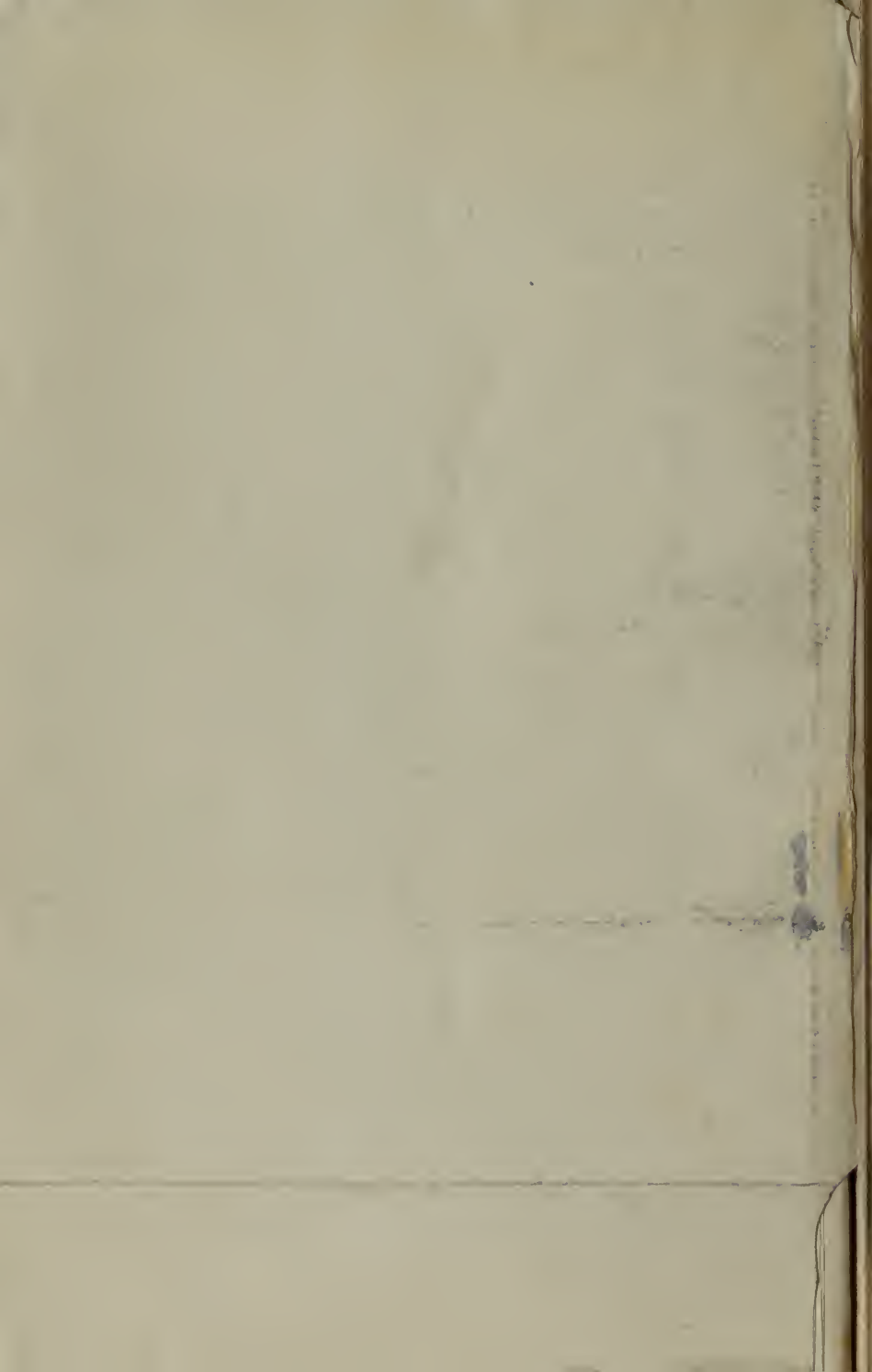
The predicted time and height of the tide can be obtained from the Tide Tables published annually by the United States Coast and Geodetic Survey.

SOUNDINGS
The Soundings are expressed in fathoms, and show the depth at the average of the lower low waters.

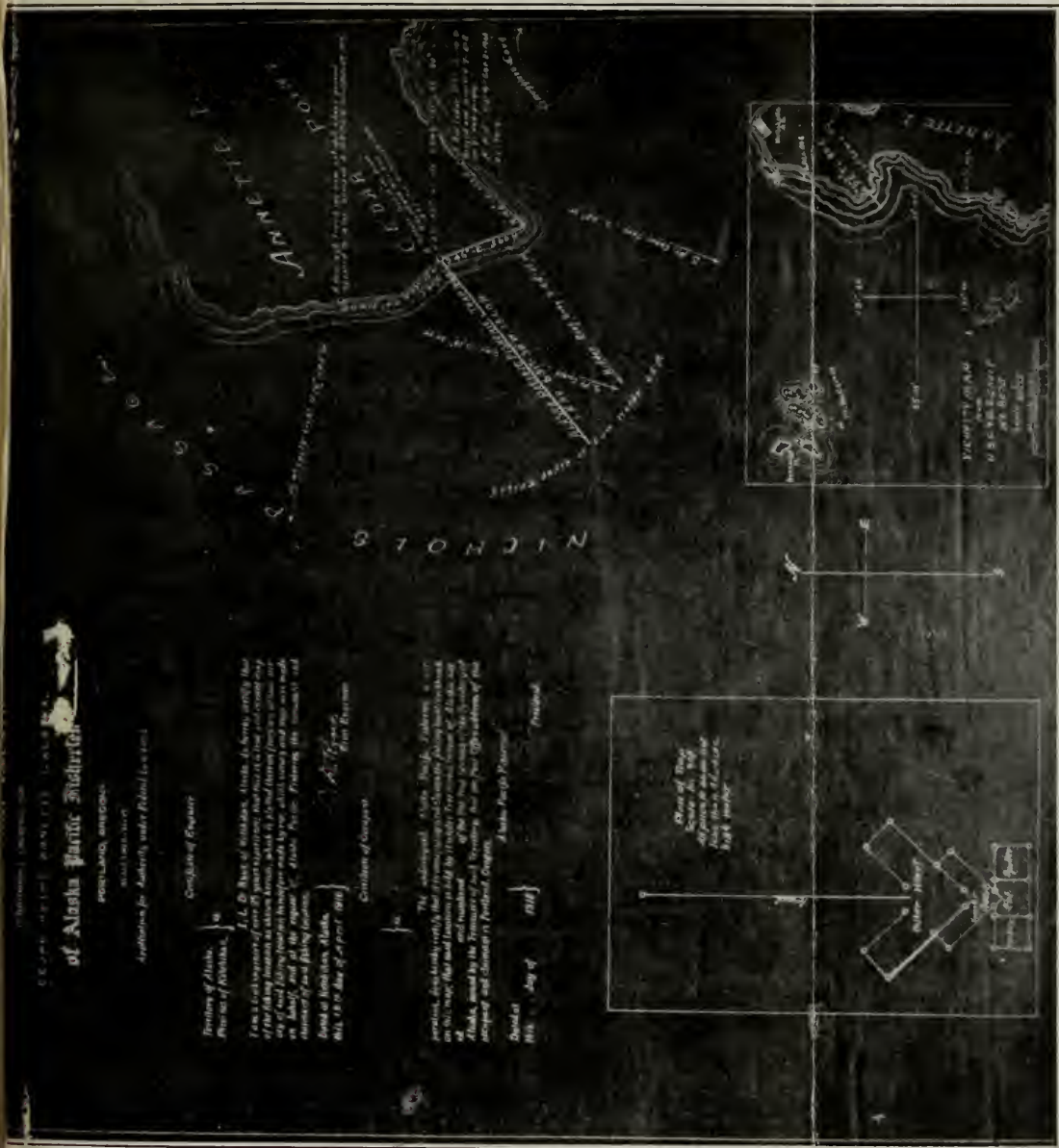
BUOYS
Red Buoy, to be left, to starboard in entering.
Black Buoy, to be left, to port in entering.
Black and Red horizontal stripes, Danger Buoy.
Black and White perpendicular stripes, Channel Buoy.
C, M, or S, signifies Can, Mun or Spit.

ABBREVIATIONS		
Materials	Colors or Shades	Other qualities
M. for Mud	bk. for black	hd. for hard
S. " Sand	gy. " gray	st. " soft
G. " Gravel	bu. " blue	fn. " fine
Sh. " Shells	dk. " dark	crs. " coarse
R. " Rock	gn. " green	brk. " broken
Co. " Coral		rvy. " rocky
		stk. " sticky

(C) for Cannery



Defendant's Exhibit No. 2—Map of Fish-Trap Location—Cedar Point, Annette Island, Alaska.



[Endorsed]: Dft's Exhibit No. 2. Received in Evidence. Jun. 15, 1916. In Cause No. 263-KA, #1468-a. J. W. Bell, Clerk. By John T. Reed, Deputy. [147]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 263-K. A.

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

**Certificate of Stenographer to Transcript of
Testimony, etc.**

I hereby certify that I am the official court stenographer for the First Judicial Division, Territory of Alaska; that I reported the trial and proceedings in the above-entitled cause and that the foregoing is a full, true and correct transcript of all the testimony and evidence introduced or offered at the trial of said cause, together with all of the exhibits on which the same was heard.

Dated this 8th day of July, 1916.

L. A. GREEN. [148]

Defendants' Proposed Findings of Fact.

BE IT FURTHER REMEMBERED that thereupon the defendants requested the Court to make the following Finding of Fact:

'Defendants' Proposed Finding No. 1.

The Court finds that in August of the year 1915 the defendants, pursuant to observations

previously made, went upon the present site of the defendants' fish-trap off Cedar Point, Annette Island, and made soundings and by the use of a diver made such observations as were necessary to determine the question of the feasibility of constructing a fish-trap at that place, and in this connection the court finds that as the result of such observations the defendants decided that the driving and constructing of a fish-trap upon the site now occupied by the defendants' trap was practicable and feasible."

Which said request of the defendant to find the facts as indicated in said proposed Finding of Fact No. 1 was refused by the Court, the Court refusing to so find. To which ruling and order of the Court the defendant, by its counsel then and there excepted on the ground that the facts as stated in said Finding are material and said Finding is upon a material issue in the case, and facts therein stated are in accordance with the undisputed and unquestioned testimony given by the witnesses. Which exception was then and there allowed by the Court.

The defendant further requested the Court to make and adopt as the Finding of the Court Defendants' Proposed Finding No. 2, which is in words and figures as follows:

"Defendants' Proposed Finding No. 2.

The Court finds that pursuant to and subsequent to the observations made in the month of August, 1915, referred to in Defendants' Proposed Finding No. 1, the defendants decided to

drive and construct a fish-trap upon the site now occupied by the defendants' trap and to enlarge their cannery at Chomly by installing therein such additional machinery and equipments as were necessary to pack the fish that would be caught and supplied by the fish-trap to be constructed off Cedar Point; that in the fall of 1915, and the winter of 1915-16, the Chomly cannery of the defendants was so enlarged and so supplied [149] with additional equipment and machinery at an expense of approximately eighteen thousand five hundred (\$18,500.00) dollars.

That in the judgment of the defendants the trap to be constructed off Cedar Point would supply 600,000 fish which when canned, would fill 50,000 cases of canned salmon; that the defendants during the winter of 1915-16 contracted for the Chinese labor and purchased the tin and other supplies necessary to the canning of the said additional 50,000 cases of salmon at Chomly, at an expense to the defendants considerable in excess of twenty-five thousand (\$25,000.00) dollars."

The Court denied the request of the defendant to find the facts as set forth in Defendants' Proposed Finding No. 2 and refused to adopt said Finding so requested, to which ruling and order of the Court the defendant, by its counsel, then and there excepted on the ground that said Finding and the whole thereof and each and every part thereof is

upon a material issue in the case and is in accordance with the undisputed and unquestioned testimony in the case; that the testimony relating to the facts set up in said Finding were not in any wise contradicted by any witness upon the trial. Which said exception was then and there allowed by the Court.

The defendants further requested the Court to find the facts in accordance with and adopt as a Finding of Fact the Defendants' Proposed Finding of Fact No. 3, which is in words and figures as follows:

“Defendants' Proposed Finding No. 3.

That during the winter of 1915-16 the defendants procured the necessary piles and other equipment to drive and construct a trap off Cedar Point upon the site of the defendants' present trap and on the 7th day of April in the spring of the year 1916 commenced the driving of such trap and completed the driving thereof on the 18th day of April, 1916, and that the defendants expended in this behalf a sum in excess of four thousand (\$4,000.00) dollars.”

Which request of the defendant to make said Proposed Finding No. 3 was denied by the Court, and the Court refused to find the facts as therein stated, to which ruling and order of the [150] Court the defendants, by counsel, then and there excepted on the ground that each and every portion of said Finding and all the facts therein stated relate to and are upon a material issue in the case and are in exact

accord with the undisputed and unquestioned testimony in the case there being no contradictory testimony upon any of the matters or things referred to in said Finding. Which said exception was then and there allowed by the Court.

The defendant further requested the Court to find the facts in accordance with Defendants' Proposed Finding No. 4, and to adopt said Finding No. 4 as the Finding of the Court, which proposed Finding of Fact No. 4 is in words and figures as follows, to wit:

“Defendants' Proposed Finding No. 4.

That all available sites for fish-traps, so far as known to the defendants, within the area from which fish can be supplied to the Chomly cannery of the defendants, have been occupied and there are no salmon to be purchased upon the market within the area from which such salmon can be taken to Chomly and canned in order to furnish the Chomly cannery with the fish necessary to fill the 50,000 cases representing the increased capacity of the cannery.”

Which said request of the defendants was then and there denied by the Court, and the Court refused to find the facts as set forth in said Proposed Finding No. 4, and refused to adopt the same as the Finding of the Court. To which ruling and order of the Court the defendants, by counsel, then and there excepted, on the ground that said finding and the whole thereof and all the facts therein stated relate to material issues in the case and is in accord

with the undisputed testimony in the case, [151] there being no dispute upon any of the matters or facts in said Finding, which said exception was then and there allowed by the Court.

Findings of Fact.

Whereupon the Court made its Findings of Fact, which are as follows:

“Findings of Fact.

I.

That by the 15th section of the Act of Congress approved March 3, 1891, entitled ‘An Act to Repeal the Timber Culture Laws’ (26 Stats. L. 1101) and by the Proclamation of the President dated the 28th day of April, 1916, there was reserved from use, occupation, settlement or benefit by any except Metlakahtlans and other Indians, the following lands and waters, to wit: ‘The body of lands known as Annette Islands, situated in the Alexander Archipelago, in Southeastern Alaska, on the north side of Dixon’s Entrance’ and ‘the waters within 3000 feet from the shore at mean low tide of Annette Island, Ham Island, Lewis Island, Spire Island, Hemlock Island and the adjacent rocks and islets’ and ‘The bays of the said islands, rocks and islets’; and that by said Proclamation warning was ‘expressly given to all unauthorized persons not to fish in or use any of said waters.’ ”

To which said Finding of Fact 1 as made by the Court the defendant at the time objected on the

ground that said Finding does not relate to any fact in the case whatsoever and is not a correct construction of the Proclamation issued by the President, which objection was then and there overruled by the Court, to which ruling and order of the Court the defendants, by counsel, then and there excepted, which exception was then and there allowed by the Court.

Whereupon the Court made its Finding of Fact No. 2 which is in words and figures as follows:

“II.

That defendant being a corporation not composed in whole or in part of Metlakahtlans or other Indians, did, on the 7th day of April, 1916, without permission or authority from any one, enter upon the navigable waters of the [152] United States, within 3000 feet from the shore at mean low tide of Annette Island, and within the area so reserved, and did then and there begin the erection of a fish-trap in said waters, to that end driving a large number of piles in said navigable waters for the purpose of holding the web to be suspended between said piles, and on the 18th day of April said defendant had said apparatus complete for fishing with the exception of the suspension of the web, all at a cost to defendant of \$4000.00, or thereabouts.

That the said fish-trap so constructed or about to be constructed is a usual and ordinary fishing appliance such as is ordinarily used by those engaged in catching salmon in the waters of Southeastern Alaska.

That the portion of said trap nearest to the shore of Annette Island is situate 200 feet to the seaward from the line of extreme low tide, and that although the said trap is in navigable water of the United States technically speaking, it is not within any portion of the waters of the United States which are, or ever have been, used for the purposes of navigation, and is not in, and is not an obstruction to the navigable capacity of, any of the waters of the United States in the sense used in the Rivers and Harbors Act approved March 3, 1899."

Whereupon the Court made and adopted its Finding of Fact No. 3, which is in words and figures as follows:

"That prior to the issuance of the Proclamation hereinbefore mentioned T. A. Heckman, Superintendent of the defendant company, stated to P. E. Harris that he knew that a Proclamation in the premises was about to be issued by the Government."

To which said Finding of Fact No. 3 the defendants, by counsel, then and there objected on the grounds of exception hereinafter stated, and excepted on the ground that said finding is not supported by sufficient evidence and is contrary to the evidence, especially in this that it has not been proven that the President had any intention of issuing said Proclamation prior to the time that the same was actually issued, and that it is not to be assumed that anyone knew what the intention of

the President was in a matter of that character, the same being wholly within the breast of the President and such that it could not be known by anyone other than the President. Which said objection being [153] overruled, and exception duly taken at the time said Finding was made, the Court then and there allowed said exception.

Whereupon the Court made its Finding of Fact No. 4 which is in words and figures as follows, to wit:

“That on the 2d day of May, 1916, and before the fishing apparatus hereinbefore described had been made complete and effective for the catching of fish by the stringing of the web, the Assistant United States Attorney for the First Division of Alaska notified the defendant of the issuance of the said Proclamation of the President, and of its contents, and notified it to cease driving or attempting to drive any traps for the purpose of catching fish within said area, and further notified it not to commence fishing within said area.”

Whereupon the Court made its Finding of Fact No. 5 which is in words and figures as follows, to wit:

“That notwithstanding said Act, Proclamation and notice, said defendant did maintain at the time of the filing of this suit, and does now maintain possession of the area enclosed by said piles and refuses to remove the same and refuses to vacate the premises, and threatens and is about to and will, if not enjoined, perfect

said trap as a fishing device and will catch therein large numbers of valuable fish and will further trespass upon said land and water so reserved as aforesaid to the irreparable injury of plaintiff, both in its Sovereign capacity and as owner and proprietor, for which plaintiff would have no plain, speedy or adequate remedy at law.”

The defendants then and there objected and excepted to said Finding No. 5 as made by the Court on the ground that said Finding is not sustained by the evidence and is contrary to the evidence, more especially in this that there was no evidence to show that the plaintiff would be injured irreparably or otherwise by the maintenance of the fish-trap off Cedar Point referred to in said Finding either in its sovereignty capacity or as owner and proprietor, or in any other capacity whatsoever, which said objection being overruled, said exception was then and there allowed by the Court. [154]

Defendant's Proposed Conclusions of Law.

Whereupon the defendants asked the Court to conclude as a matter of law, and requested the Court to adopt as its Conclusion of Law. Defendants' Conclusion of Law No. 1, which is in words and figures as follows:

“Defendants' Proposed Conclusion of Law No. 1.

The Court holds as a matter of law that in the construction of a fish-trap off Cedar Point, Annette Island, and the maintenance thereof the defendants were engaged in the exercise of their

common right of fishery, and being so engaged in the exercise of a lawful right they acquired a vested right in said fish-trap from which they could not be divested by a subsequent proclamation of the President or otherwise without compensation.”

Which said request was then and there denied by the Court and the Court refused to adopt as its conclusion Conclusion of Law No. 1 proposed by the defendants, to which ruling and order of the Court the defendants, by counsel, then and there excepted on the ground that said conclusion follows from the facts found by the Court and also from the facts proven upon the trial of the cause, which said exception was then and there allowed by the Court.

The defendants further requested the Court to conclude as a matter of law and to adopt as the conclusion of law of the Court the Conclusion of Law No. 2 as proposed by the defendants, which is in words and figures as follows:

“Defendants’ Proposed Conclusion of Law No. 2.

The Court concludes as a matter of law that the reservation of Annette Island, as made by Act of Congress, March 3, 1891, reserved the lands to ordinary high-water mark only and did not include any of the navigable waters of the United States, and that the proclamation of the President referred to in the pleadings herein was made without authority of law in that the power to control and dispose of the territories and other property of the United States is by the Constitution vested in Congress.” [155]

Which said request of the defendants was then and there denied by the Court, and the Court then and there refused to conclude as a matter of law in accordance with Conclusion of Law No. 2 requested by the defendants, and to conclude as therein stated, to which ruling and order of the Court, the defendants, by counsel, then and there excepted on the ground that said Conclusion follows as a matter of law from the facts found and from the facts proven upon the trial of the cause, which said exception was then and there allowed by the Court.

The defendant further requested the Court to conclude as a matter of law as stated in Defendants' proposed Conclusion of Law No. 3 and to adopt said Conclusion of Law No. 3 as the Conclusion of the Court, which said conclusion of law so requested is in words and figures as follows:

“Defendants' Proposed Conclusion of Law No. 3.

From the facts found the Court concludes that the plaintiff is not entitled to the relief demanded or to any relief whatsoever.”

Which said request of the defendants was then and there denied by the Court and the Court then and there refused to conclude as a matter of law as requested and to adopt said Conclusion of Law as the Court's conclusion of law, to which ruling and order of the Court the defendants, by counsel, then and there excepted on the ground that said Conclusion follows as a matter of law from the facts found and from the facts proven upon the trial of the cause, which said exception was then and there allowed by the Court.

Conclusion of Law.

Whereupon the Court made and adopted its Conclusion of [156] Law, which is in words and figures as follows:

“CONCLUSION OF LAW

I.

That plaintiff is entitled to an injunction as prayed for in the complaint.”

to which ruling and order of the Court in so concluding as a matter of law, the defendants, by counsel then and there objected and excepted on the ground that upon the facts found, as well as upon the facts proven at the trial, the plaintiff is not entitled to an injunction or to any other relief whatsoever for the reasons, among others, that the original reservation of Annette Island did not include the area in which the fish-trap of the defendants was constructed; that the Proclamation of the President, referred to in the Findings was made without authority of Law and was in violation of the Constitution of the United States by which it is provided that Congress shall have control over the territory and property of the United States, and further, that the defendants, under the evidence and the facts found had a vested right to maintain the fish-trap off Cedar Point, referred to in the Findings and Pleadings herein; that they constructed the same in the exercise of the right of fishery and were rightfully maintaining the same at the time of the issuance of the President's Proclamation and at all times, and could not be deprived of its said fish-trap

or the use thereof without compensation and without due process or otherwise.

Now come the defendants and move the Court to settle and allow the above and foregoing as a true and correct Bill of Exceptions herein and to certify that the same contains all the [157] evidence in the case, and duly order that the same be made part of the record.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants.

Order Settling Bill of Exceptions.

And now this matter coming on to be heard on the motion and request of the defendants that the above and foregoing Bill of Exceptions be allowed and settled as a true and correct Bill of Exceptions herein, and the request of the defendants that the Court certify that the same contains all the evidence in the cause and that it be made part of the record, and the Court being fully advised in the premises,

NOW ORDERS that the above and foregoing be, and the same is, settled and allowed as a true, full and correct Bill of Exceptions herein, and the Court hereby certifies that the above and foregoing Bill of Exceptions so settled and allowed by the Court contains all the evidence adduced at the trial and the whole thereof, and is a true, full and correct record of the proceedings had, and the Court further orders that the above and foregoing Bill of Exceptions hereby settled and allowed be, and the same is hereby, made a part of the record in this cause. The Court further certifies that the same was duly pre-

sented within the time allowed therefor by the court.

Done this 10th day of July, A. D. 1916.

ROBERT W. JENNINGS.

Entered Court Journal No. M, page 136. [158]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 263-K. A.

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

Injunction and Final Decree.

This cause coming on to be heard heretofore, to wit, on the 15th day of June, 1916, by consent of the parties on the issues raised on the bill, answer and reply and on the motion theretofore filed for an injunction, and the Court having heard the evidence introduced by the respective parties, and the cause having been finally submitted to the Court on the 17th day of June, 1916, and the Court having duly considered the same and heretofore having filed its Opinion herein and having made its Findings of Fact and Conclusions of Law herein, now upon motion of the plaintiff,

IT IS HEREBY ORDERED AND DECREED that the Alaska Pacific Fisheries, a corporation, its

officers, agents, employees, and all persons acting by, through or under it or in privity with it, be and they are enjoined and restrained from doing any act or thing whatsoever in driving, constructing or completing any fish-trap or structure whatsoever on and at Annette Islands reservation or in the waters appurtenant thereto or surrounding the same and being the waters within 3,000 feet from the shore at mean low tide of Annette Island, Ham Island, Lewis Island, Spire Island, Hemlock Island and the adjacent rocks and islets, all in Southeastern Alaska, and from maintaining or operating any trap or structure for fishing therein, and from fishing there in any manner whatsoever, and particularly from driving, operating, completing or maintaining a fish-trap at or near Cedar Point, Annette Island, aforesaid, and from delivering or causing to be delivered any material whatsoever for the construction of fishing traps upon said reserve or in said waters.

[159]

AND IT IS FURTHER ORDERED AND DECREED that the defendant, the Alaska Pacific Fisheries, be and it is hereby ordered to vacate the lands and waters mentioned in the Proclamation of the President of the United States of April 28, 1916, and to remove therefrom and to remove any and all structures therefrom heretofore erected therein by it directly or indirectly, and to refrain from in any manner trespassing in and upon said waters and said reserve.

AND IT IS ORDERED that plaintiff herein have judgment for its costs and disbursements in this suit;

and hereof let execution issue. Defendant is allowed sixty days from this date within which to file proposed Bill of Exceptions.

Done in open court this 7th day of July, 1916.

ROBERT W. JENNINGS,
District Judge.

Entered Court Journal No. M, pages 128, 129.

Filed in the District Court, District of Alaska, First Division. Jul. 7, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [160]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Persons Acting by, Through, or Under It or in Privity With It,

Defendants.

*In the United States Circuit Court of Appeals for
the Ninth Circuit Holden at San Francisco.*

No. —.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through, or Under It or in
Privity With It,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Petition for an Appeal.

The above-named Alaska Pacific Fisheries, a corporation, its officers, agents, employees, and all persons acting by, through or under it or in privity with it, appellants herein, conceiving itself and themselves aggrieved by the judgment and decree rendered herein on the 7th day of July, A. D. 1916, adjudging and decreeing, among other things, that the Alaska Pacific Fisheries, a corporation, its officers, agents, employees and all persons acting by, through or under it or in privity with it, be and they are enjoined and restrained from doing any act or thing whatsoever in driving, constructing or completing any fish-trap [161] or structure whatsoever on and at Annette Islands reservation or in the waters appurtenant thereto or surrounding the same and being the waters within 3,000 feet from the shore at mean low tide of Annette Island, Ham Island, Lewis Island, Spire Island, Hemlock Island and the ad-

jacent rocks and islets, all in southeastern Alaska, and from maintaining or operating any trap or structure for fishing therein, and from fishing there in any manner whatsoever, and particularly from driving, operating, completing or maintaining a fish-trap at or near Cedar Point, Annette Island, aforesaid, and from delivering or causing to be delivered any material whatsoever for the construction of fishing-traps upon said reserve or in said waters. And further ordering and decreeing that the defendant, the Alaska Pacific Fisheries, be and it is hereby ordered to vacate the lands and waters mentioned in the Proclamation of the President of the United States of April 28, 1916, and to remove any and all structures therefrom prior to the date of the decree erected therein by it directly or indirectly and to refrain from in any manner trespassing in and upon said waters and said reserve, and further giving the plaintiff a judgment for costs and disbursements, which said judgment and decree was rendered in favor of the plaintiff and against the said defendants and was rendered by the Honorable Robert W. Jennings, Judge of the District Court for the District of Alaska, Division Number One, on the day above mentioned, and the above-named Alaska Pacific Fisheries, a corporation, its officers, agents, employees, and all persons acting by, through or under it or in privity with it, the defendants above named, and each of said defendants, do hereby appeal from said judgment and decree to the United States Circuit [162] Court of Appeals for the Ninth Circuit, and that the above-named appellants,

and each of them, do further pray that it and they may be allowed an appeal from said judgment and decree and from the whole and every part thereof to the said United States Circuit Court of Appeals for the Ninth Circuit as prayed for, and the appellants and each of them further pray that it and they may be given a supersedeas herein in order that the decree complained of may not be enforced against it or them until the errors herein complained of can be reviewed by the said United States Circuit Court of Appeals for the Ninth Circuit.

HELLENTHAL & HELLENTHAL,

C. H. HANFORD,

JAMES M. SHOUP.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1916. J. W. Bell. Clerk.
By —————, Deputy. [163]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1468-A.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through or Under It or in
Privity With It,

Defendants.

Application for Supersedeas.

*In the United States Circuit Court of Appeals for
the Ninth Circuit Holden at San Francisco.*

No. —.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through or Under It or in
Privity With It,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Come now the defendants and appellants herein, a petition for an appeal having been filed asking the Court to permit an appeal herein to the Circuit Court of Appeals for the Ninth Circuit holden at San Francisco, and apply to the Court for a Supersedeas herein in order that the judgment and decree heretofore rendered herein may not be enforced and may be stayed during the pendency of the appeal and in this connection the defendants and appellants respectfully direct the Court's attention to the testimony adduced upon the trial by which it is conclusively shown that the defendants and appellants would be damaged in a sum not less than fifty thousand dollars if they [164] were prevented from operating and fishing the fish-trap at Cedar Point in controversy in this case during the season of 1916, while the plaintiff and appellee would suffer no dam-

age whatsoever because of the operation of said fish-trap by the defendants and appellants during the season of 1916, which said fishing season has just commenced.

And the Court's attention is directed to the further fact that since the decree contains a mandatory injunction directing the defendants and appellants to remove the fish-trap at Cedar Point, the execution of the decree would place the defendants where they could not be restored to their rights in the event of a reversal by the Circuit Court of Appeals.

HELLENTHAL & HELLENTHAL,
Attorneys for Defendants and Appellants.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1916. J. W. Bell, Clerk.
By —————, Deputy. [165]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1468-A.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through or Under It or in
Privity With It,
Defendants.

*In the United States Circuit Court of Appeals for
the Ninth Circuit Holden at San Francisco.*

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting by, Through or Under It, or in
Privity With It,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Assignment of Errors.

Come now the Alaska Pacific Fisheries, a corpora-
tion, its officers, agents, employees, and all persons
acting by, through or under it or in privity with it,
the appellants herein, and assign the following errors
made by the trial court as the errors upon which the
said appellants will rely for a reversal of the judg-
ment and decree rendered herein:

FIRST ERROR ASSIGNED.

That the District Court for the Territory of
Alaska, Division Number One, erred in refusing to
make and adopt Finding of Fact No. 1 as requested
by the appellant and to find the facts as stated in said
Finding of Fact No. 1, which said proposed [166]
Finding of Fact No. 1 is in words and figures as fol-
lows:

“Defendants’ Proposed Finding No. 1.

The Court finds that in August of the year
1915, the defendants, pursuant to observations

previously made, went upon the present site of the defendants' fish-trap off Cedar Point, Annette Island, and made soundings and by the use of a diver made such observations as were necessary to determine the question of the feasibility of constructing a fish-trap at that place, and in this connection the Court finds that as the result of such observations the defendants decided that the driving and constructing of a fish-trap upon the site now occupied by the defendants' trap was practicable and feasible."

SECOND ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in refusing to make and adopt Finding of Fact No. 2 as requested by the appellant and to find the facts as stated in said Finding of Fact No. 2, which said proposed Finding of Fact No. 2 is in words and figures as follows:

"Defendants' Proposed Finding No. 2.

The Court finds that pursuant to and subsequent to the observations made in the month of August, 1915, referred to in Defendants' Proposed Finding No. 1, the defendants decided to drive and construct a fish-trap upon the site now occupied by the defendants' trap and to enlarge their cannery at Chomly by installing therein such additional machinery and equipments as were necessary to pack the fish that would be caught and supplied by the fish-trap to be constructed off Cedar Point; that in the fall of 1915,

and the winter of 1915-16, the Chomly cannery of the defendants was so enlarged and so supplied with additional equipment and machinery at an expense of approximately eighteen thousand five hundred (\$18,500.00) dollars.

That in the judgment of the defendants the trap to be constructed off Cedar Point would supply 600,000 fish which, when canned, would fill 50,000 cases of canned salmon; that the defendants during the winter of 1915-16 contracted for the Chinese labor and purchased the tin and other supplies necessary to the canning of the said additional 50,000 cases of salmon at Chomly, at an expense to the defendants considerable in excess of twenty-five thousand (\$25,000.00) dollars.” [167]

THIRD ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in refusing to make and adopt Finding of Fact No. 3 as requested by the appellant and to find the facts as stated in said Finding of Fact No. 3, which said proposed Finding of Fact No. 3 is in words and figures as follows:

“Defendants’ Proposed Finding No. 3.

That during the winter of 1915-16 the defendants procured the necessary piles and other equipment to drive and construct a trap off Cedar Point upon the site of the defendants’ present trap and on the 7th day of April in the spring of the year 1916 commenced the driving

of such trap and completed the driving thereof on the 18th day of April, 1916, and that the defendants expended in this behalf a sum in excess of four thousand (\$4,000.00) dollars.”

FOURTH ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in refusing to make and adopt Finding of Fact No. 4 as requested by the appellant and to find the facts as stated in said Finding of Fact No. 4, which said proposed Finding of Fact No. 4 is in words and figures as follows:

“Defendants’ Proposed Finding No. 4.

That all available sites for fish-traps, so far as known to the defendants, within the area from which fish can be supplied to the Chomly cannery of the defendants, have been occupied and there are no salmon to be purchased upon the market within the area from which such salmon can be taken to Chomly and canned in order to furnish the Chomly cannery with the fish necessary to fill the 50,000 cases representing the increased capacity of the cannery.”

FIFTH ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in making and adopting its Finding of Fact No. 1 and in finding the facts as in said Finding No. 1 [168] stated, which Finding No. 1 as made by the Court is in words and figures as follows:

“That by the 15th section of the Act of Congress approved March 3, 1891, entitled ‘An Act to Repeal the Timber Culture Laws’ (26 Stats. L. 1101) and by the Proclamation of the President dated the 28th day of April, 1916, there was reserved from use, occupation, settlement or benefit by any except Metlakahtlans and other Indians, the following lands and waters, to wit: ‘The body of lands known as Annette Islands, situate in the Alexander Archipelago, in Southeastern Alaska, on the North side of Dixon’s Entrance’ and ‘the waters within 3,000 feet from the shore at mean low tide of Annette Island, Ham Island, Lewis Island, Spire Island, Hemlock Island and the adjacent rocks and islets’ and ‘the bays of the said islands, rocks and islets’; and that by said Proclamation warning was ‘expressly given to all unauthorized persons not to fish in or use any of said waters.’ ”

SIXTH ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in making and adopting its Finding of Fact No. 3 and in finding the facts as in said Finding No. 3 stated, which Finding No. 3 as made by the Court is in words and figures as follows:

“That prior to the issuance of the Proclamation hereinbefore mentioned T. A. Heckman, Superintendent of the defendant company, stated to P. E. Harris that he knew that a Proc-

clamation in the premises was about to be issued by the Government.”

SEVENTH ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in making and adopting its Finding of Fact No. 5 and in finding the facts as in said Finding No. 5 stated, which Finding No. 5 as made by the Court is in words and figures as follows:

“That notwithstanding said Act, Proclamation and notice, said defendant did maintain at the time of the filing of this suit, and does now maintain possession of the area enclosed by said piles and refuses to remove the same and refuses to vacate the premises, and threatens and is about to and will, if not enjoined, perfect said trap as a fishing device and will catch [169] therein large numbers of valuable fish and will further trespass upon said land and water so reserved as aforesaid to the irreparable injury of plaintiff, both in its Sovereign capacity and as owner and proprietor, for which plaintiff would have no plain, speedy or adequate remedy at law.”

EIGHTH ERROR ASSIGNED.

The District Court for the Territory of Alaska, Division Number One, erred in refusing to conclude as a matter of law and adopt as its conclusion of law, Conclusion of Law No. 1 requested by the defendants, which said Defendants' Proposed Conclusion of Law No. 1, is in words and figures as follows:

“Defendants’ Proposed Conclusion of Law No. 1.

The Court holds as a matter of law that in the construction of a fish-trap off Cedar Point, Annette Island, and the maintenance thereof the defendants were engaged in the exercise of their common right of fishery, and being so engaged in the exercise of a lawful right they acquired a vested right in said fish-trap from which they could not be divested by a subsequent proclamation of the President or otherwise without compensation.”

NINTH ERROR ASSIGNED.

The District Court for the Territory of Alaska, Division Number One, erred in refusing to conclude as a matter of law and adopt as its conclusion of law, Conclusion of Law No. 2 requested by the defendants, which said Defendants’ Proposed Conclusion of Law No. 2 is in words and figures as follows :

“Defendants’ Proposed Conclusion of Law No. 2.

The Court concludes as a matter of law that the reservation of Annette Island as made by Act of Congress March 3, 1891, reserved the lands to ordinary high-water mark only and did not include any of the navigable waters of the United States, and that the proclamation of the President referred to in the pleadings herein was made without authority of law in that the power to control and dispose of the territories

and other property of the United States is by the Constitution vested in Congress.” [170]

TENTH ERROR ASSIGNED.

The District Court for the Territory of Alaska, Division Number One, erred in refusing to conclude as a matter of law and adopt as its conclusion of law, Conclusion of Law No. 3 requested by the Defendants, which said Defendants’ Proposed Conclusion of Law No. 3 is in words and figures as follows:

“Defendants’ Proposed Conclusion of Law No. 3.

From the facts found the Court concludes that the plaintiff is not entitled to the relief demanded or to any relief whatsoever.”

ELEVENTH ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in concluding as a matter of law and making and entering its Conclusion of Law, which is in words and figures as follows:

“That plaintiff is entitled to an injunction as prayed for in the complaint.”

TWELFTH ERROR ASSIGNED.

That the District Court for the Territory of Alaska, Division Number One, erred in entering its judgment and decree herein, which is in words and figures as follows:

*"In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1468-A.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants.

INJUNCTION AND FINAL DECREE.

This cause coming on to be heard heretofore, to wit, on the 15th day of June, 1916, by consent of the parties on the [171] issues raised on the bill, answer and reply and on the motion theretofore filed for an injunction, and the Court having heard the evidence introduced by the respective parties, and the cause having been finally submitted to the Court on the 17th day of June, 1916, and the Court having duly considered the same and heretofore having filed its Opinion herein and having made its Findings of Fact and Conclusions of Law herein, now upon motion of the plaintiff.

IT IS HEREBY ORDERED AND DECREED that the Alaska Pacific Fisheries, a corporation, its officers, agents, employees, and all persons acting by, through or under it or in privity with it, be and they are enjoined and restrained from doing any act or thing whatsoever in driving, constructing or completing any fish-trap or structure whatsoever on and

at Annette Islands reservation or in the waters appurtenant thereto or surrounding the same and being the waters within 3,000 feet from the shore at mean low tide of Annette Island, Ham Island, Lewis Island, Spire Island, Hemlock Island and the adjacent rocks and islets, all in Southeastern Alaska, and from maintaining or operating any trap or structure for fishing therein, and from fishing there in any manner whatsoever, and particularly from driving, operating, completing or maintaining a fish-trap at or near Cedar Point, Annette Island, aforesaid, and from delivering or causing to be delivered any material whatsoever for the construction of fishing traps upon said reserve or in said waters.

AND IT IS FURTHER ORDERED AND DECREED that the defendant, the Alaska Pacific Fisheries, be and it is hereby ordered to vacate the lands and waters mentioned in the Proclamation of the President of the United States of April 28, 1916, and to remove therefrom and to remove any and all structures therefrom heretofore erected therein by it directly or indirectly, and to refrain from in any manner trespassing in and upon said waters and said reserve.

AND IT IS ORDERED that plaintiff herein have judgment for its costs and disbursements in this suit; and hereof let execution issue. Defendant is allowed 60 days from this date within which to file proposed Bill of Exceptions.

Done in open court this 7th day of July, 1916.

ROBERT W. JENNINGS,
District Judge."

HELLENTHAL & HELLENTHAL,
C. H. HANFORD,
JAMES M. SHOUP,

Attorneys for Appellants.

Due service by copy admitted this 10th day of July, 1916.

JAMES A SMISER,
Attorneys for Appellee.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1916. J. W. Bell, Clerk.
By —————, Deputy. [172]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 243-K, A.

No. 1468-A.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
et al.,

Defendants,

Order Allowing Appeal, etc.

Now, on this 10th day of July, came on to be heard the petition of the defendants in the above-entitled cause for an order allowing their appeal herein as

prayed for in their petition filed this day, and that a supersedeas of the decree heretofore entered herein be allowed pending said appeal, and fixing the amount of bond in the premises; and the Court being fully advised doth allow said appeal and doth grant said request for a supersedeas so far as all that part of the decree is concerned which awards costs and disbursements and orders the defendants to remove any and all structures from the disputed area; and doth deny said request for a supersedeas so far as the remainder of the decree is concerned. And the amount of bond on appeal is hereby fixed at \$250.00, same to act as a supersedeas as hereinbefore granted.

Dated this 10th day of July, 1916.

ROBERT W. JENNINGS,

Judge.

Entered Court Journal, No. M, page 134.

The defendants except to the ruling and order of the Court in denying the supersedeas.

Filed in the District Court, District of Alaska, First Division. Jul. 10, 1916. J. W. Bell, Clerk.
By —————, Deputy. [173]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

*In the United States Circuit Court of Appeals for
the Ninth Circuit, Holden at San Francisco.*

No. 263-K, A.

No. 1468-A.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting By, Through or Under It or in
Privity with It,

Defendants,

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and All Per-
sons Acting By, Through or Under It or in
Privity with It,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Alaska Pacific Fisheries, a Corpora-
tion, appellant herein, and B. M. Behrends, surety,
all residents of the Territory of Alaska, are held
firmly bound unto the above-named United States

of America, appellee, in the sum of Two Hundred *Fifty*, to be paid to the said appellee for the payment of which well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, administrators and assigns and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 10th day of July, in the year of our Lord, one thousand nine hundred and sixteen. [174]

Whereas the above-named Alaska Pacific Fisheries, a corporation, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and decree rendered in the above-entitled suit by Robert W. Jennings, Judge of the District Court for the Territory of Alaska,

Now, therefore, the condition of this obligation is such that if the above-named Alaska Pacific Fisheries shall prosecute its said appeal to effect and answer all costs, if they fail to make said appeal good then this obligation shall be void; otherwise the same shall be in full force and effect.

ALASKA PACIFIC FISHERIES.

By S. HELLENTHAL, [Seal]

Its Attorney.

B. M. BEHREND, [Seal]

Surety.

Approved.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1916. J. W. Bell, Clerk.
By —————, Deputy. [175]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

*In the United States Circuit Court of Appeals for
the Ninth Circuit, Holden at San Francisco.*

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees and All Per-
sons Acting By, Through or Under It or in
Privity With It,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Citation on Appeal.

THE UNITED STATES OF AMERICA,—ss.
To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty (30) days from and after this date, pursuant to an *appealed* filed in the clerk's office of the District Court for the Territory of Alaska, Division Number One, at Juneau, in the above-entitled cause, wherein the Alaska Pacific Fisheries, a corporation, the appellant herein, was the defendant, and the United States of America, the appellee herein, was

the plaintiff, to show cause, if any there be, why the judgment and decree entered in said cause of the United States of America vs. Alaska Pacific Fisheries, a corporation, its officers, agents, employees, and all persons acting by, through or under it or in privity with it, and referred to in the petition for an appeal filed in said [176] cause, which said appeal was by order of the Court allowed as prayed for, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States this 10th day of July, in the year of our Lord one thousand nine hundred and sixteen.

ROBERT W. JENNINGS,
Judge of the District Court for the Territory of
Alaska, Division Number One.

Copy of the foregoing received and service admitted this 10th day of July, 1916.

[Seal]

JAMES A. SMISER,
U. S. Atty.

Filed in the District Court, District of Alaska,
First Division. Jul. 10, 1916. J. W. Bell, Clerk.
By ———, Deputy. [177]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

*In the United States Circuit Court of Appeals for
the Ninth Circuit, Holden at San Francisco.*

No. 263-K.A.

No. 1468-A.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and all Per-
sons Acting by, Through or Under It or in
Privity With It,
Defendants.

ALASKA PACIFIC FISHERIES, a Corporation,
Its Officers, Agents, Employees, and all Per-
sons Acting by, Through or Under It or in
Privity With It,
Appellants.

vs.

THE UNITED STATES OF AMERICA,
Appellee.

Praeipie for Transcript of Record.

To the Clerk of the District Court for the Territory
of Alaska, Division Number One.

You will kindly prepare and transmit to the Cir-
cuit Court of Appeals for the Ninth Circuit in con-
nection with the appeal herein copies of the follow-

ing papers and documents herein: Complaint, Answer, Reply, Opinion, Bill of Exceptions, Decree, Petition for an Appeal, Application for Supersedeas, Assignment of Errors, Order Allowing Appeal, Bond on Appeal, Original Citation on Appeal, together with acceptance of service thereon, and this Praeceptum.

HELLENTHAL & HELLENTHAL,

Attorneys for Appellants.

Filed in the District Court, District of Alaska,
First Division. Jul. 20, 1916. J. W. Bell, Clerk.
By —————, Deputy. [178]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

United States of America,
District of Alaska,
Division No. 1,—ss.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 178 pages of typewritten matter, numbered from 1 to 178, both inclusive, constitute a full, true and complete copy, and the whole thereof, prepared in accordance with the praecipe of defendant and plaintiff in error, on file in my office and made a part hereof, in Cause No. 263-K.A. and No. 1468-A, wherein the United States of America is plaintiff and defendant in error, and Alaska Pacific Fisheries, a corporation, is defendant and plaintiff in error.

I further certify that the said record is by virtue of an appeal and citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Eighty-one and 45/100 Dollars (\$81.45), has been paid to me by plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 24th day of July, 1916.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

[Endorsed]: No. 2828. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Pacific Fisheries, a Corporation, Its Officers, Agents, Employees, and All Persons Acting by, Through or Under it or in Privity With it, Appellant, vs. The United States of America, Appellee. Transcript of Record Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed August 7, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

